

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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PETITIONS TO CHANGE PLACE OF USE AND PURPOSE OF USE
FOR WATER RIGHT PERMITS 1267, 1268, 1271, 2492 OF
OROVILLE-WYANDOTTE IRRIGATION DISTRICT
AND WATER RIGHT PERMITS 11516 AND 11518 OF
OROVILLE-WYANDOTTE AND YUBA COUNTY WATER DISTRICT

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HELD AT
901 P STREET
SACRAMENTO, CALIFORNIA
MONDAY, OCTOBER 16, 2000
9:00 A.M.
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Reported by:

ESTHER F. WIATRE
CSR NO. 1564

CAPITOL REPORTERS (916) 923-5447

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APPEARANCES

BOARD MEMBERS:

JOHN BROWN, HEARING OFFICER

STAFF MEMBERS:

KATHERINE MROWKA
RUSSELL STEIN

COUNSEL:

DAN FRINK

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REPRESENTATIVES

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BY: ALAN B. LILLY, ESQ.

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CITY OF YUBA CITY:

DANIEL F. GALLERY, ESQ.
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SACRAMENTO, CALIFORNIA

MONDAY, OCTOBER 16, 2000, 9:00 A.M.

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H.O. BROWN: Good morning.

This is the time and place for a hearing to receive evidence regarding the petitions for change in place of use and purpose of use for permits for Oroville-Wyandotte Irrigation District Permits No. 1267, 1268, 1271 and 2492 and an additional two permits, 11516 and 11518, that are jointly held by Oroville-Wyandotte Irrigation District and Yuba County Water District.

OWID seeks to expand its place of use to cover its present service area boundaries and to add municipal and industrial uses to the permits. OWID also filed petitions for extension of time on YCWD and has petitions to modify Permit 11518 to add Yuba City to the authorized place of use under the permit and to a point of diversion and/or rediversion on the Feather River near Yuba City.

This hearing is being held in accordance with the Notice of Hearing dated September 12th, year 2000.

I am John Brown, a member of the State Water Resources Control Board. I will be assisted today by staff members Dan Frink on my left, who is our staff counsel; Russell Stein on my far right who is staff environmentalist specialist; and Kathy Mrowka on my right as staff engineer.

1 The purpose of this hearing is to provide the
2 petitioners, protestants and interested persons an
3 opportunity to present relevant oral testimony, maps,
4 charts, studies and other materials which may assist the
5 Board in determining whether the petition should be approved
6 or denied and which address the following key issues:

7 The key issues to be addressed are listed in the
8 hearing notice. I will summarize those issues.

9 Number one, should the State Water Resources Control
10 Board approve the petitions for change in purpose and place
11 of use for:

12 A, addition of municipal and industrial purposes of use
13 to all of the subject permits;

14 B, enlargements of the OWID service area under Permits
15 1267, 1268, 1271, 2492, 11516 and 11518;

16 C, enlargement of the YCWD service area under Permit
17 11518 that includes Yuba City and addition of a point of
18 diversion and rediversion at Yuba City?

19 If the change petitions are approved what terms and
20 conditions should the State Water Resources Control Board
21 add to the permits to address the effects of the proposed
22 changes.

23 Two, should the State Water Resources Control Board
24 approve the petitions for extension of time for Permits
25 11516 and 11518? If the State Water Resources Control Board

1 grants extension of time, what conditions should be included
2 in the permits and what period of time is appropriate for
3 completion of the project?

4 If the State Board does not approve an extension of
5 time, should the State Board find that there is cause to
6 revoke in part or in full Permits 11516 and 11518?

7 Issue three: What action should be taken to clarify
8 the related rights and duties of OWID and YCWD with respect
9 to the water right permits?

10 Issue four: Should the State Board revoke
11 authorization to store 40,000 acre-feet annually in New York
12 Flat Reservoir under Permit 1268 due to failure to construct
13 the facility and put water to beneficial use?

14 Issue five: What is the status of the environmental
15 documentation for the actions requested by the petitioners?

16 Issue six: Will approval of the petition result in
17 adverse impact to public trust resources? What conditions,
18 if any, should the State Water Board adopt to avoid or
19 mitigate any adverse impacts on public trust resources that
20 would otherwise occur as a result of approval of the
21 petitions?

22 The order of proceedings: Our order of proceedings in
23 this hearing will be to first hear any nonevidentiary, oral
24 policy statements. Then we will receive testimony from the
25 petitioners and their witnesses, followed by

1 cross-examination by the protestants, other parties, Board
2 staff and myself.

3 I will allow each of the petitioners to present all of
4 their testimony at one time, including the testimony on
5 their petition changes and their protest issues. After all
6 of the parties' witnesses have presented a brief oral
7 summary of their written testimony, the witnesses will be
8 made available for cross-examination as a panel. Following
9 the petitioner's testimony and related cross-examination,
10 other parties may present their evidence.

11 I would like to remind you there is a 20-minute time
12 limitation per witness for direct testimony and a two hour
13 total time limitation for cases in chief.

14 Persons presenting policy statements are reminded that
15 a policy statement is not evidentiary. It may include the
16 policy views and position of the speaker and nonexpert
17 analysis of evidence. Persons who wish to make only policy
18 statements may do so subject to the following provisions:

19 A, persons making such a statement will not be sworn or
20 asked to affirm the truth of their statements.

21 B, such persons must not attempt to use their
22 statements to present evidence of facts either orally or by
23 introduction of written exhibits.

24 C, at the discretion of the Hearing Officer, questions
25 may be addressed to persons making policy statements for the

1 purpose of clarifying their statements. However, such
2 persons will not be subject to cross-examination.

3 With this in mind, I invite appearances by the
4 parties. Will those making appearances please state your
5 name, address and whom you represent so that the Court
6 Reporter, Esther, can enter this information into the
7 record. Please make arrangements with Esther for copies of
8 the transcripts.

9 Who is representing Oroville-Wyandotte Irrigation
10 District?

11 MR. BABER: Mr. Chairman, Bill Baber of the Minasian
12 law firm out of Oroville, 1681 Bird Street, Oroville.

13 H.O. BROWN: Thank you, Mr. Baber.

14 Who is representing Yuba County Water District?

15 MR. LILLY: Alan Lilly of Bartkiewicz, Kronick &
16 Shanahan, 1011 22nd Street, Sacramento, California, and I am
17 representing the Yuba County Water District. Also in the
18 audience we have Board chair, Dale Storey, who is going to
19 make a policy statement and Board Member Loren Olson. Other
20 Board Members will be appearing at other times during the
21 hearing as their schedules allow. And at the table with me
22 is the District General Manager, Dennis Parker.

23 H.O. BROWN: Thank you, Mr. Lilly.

24 Who is representing Yuba City?

25 MR. GALLERY: Dan Gallery, 926 J Street, Suite 505,

1 Sacramento, California. Representing City of Yuba City.
2 With me is Mr. Doolittle, Vice Mayor of the City who will be
3 making a policy statement. Also with me is Mr. Jeff Foltz,
4 City Manger, and to my right Mr. Bill Lewis, City Utilities
5 Director.

6 H.O. BROWN: Thank you, Mr. Gallery.

7 Are there any persons present who wish to present
8 nonevidentiary policy statements?

9 You can just give your name and address right now.

10 MR. STOREY: Dale Storey, Oregon House.

11 H.O. BROWN: Thank you, Mr. Storey.

12 Any other persons wishing to make policy statements?

13 MR. LILLY: Mr. Brown, we had previously listed Tib
14 Belza as a witness. Because of medical reasons, Mr. Belza
15 will not be able to attend the hearing. He is actually
16 scheduled to go into surgery in the middle of this week. So
17 he has rerun his prior testimony as a policy statement and
18 signed that so we would like to just submit that in the
19 record. He obviously will not be here to read that. At the
20 appropriate time we would like to do that.

21 H.O. BROWN: Thank you, Mr. Lilly.

22 Give Mr. Belza our kind regards.

23 MR. LILLY: Thank you.

24 H.O. BROWN: We wish him well.

25 Yes, sir.

1 MR. DOOLITTLE: Dave Doolittle from Yuba City. I have
2 a policy statement.

3 H.O. BROWN: Is it Dave or Jay?

4 MR. DOOLITTLE: David.

5 H.O. BROWN: Your last name, David?

6 MR. DOOLITTLE: Doolittle.

7 H.O. BROWN: Thank you.

8 Any other persons?

9 At this time I will ask our counselor, Dan Frink, to
10 cover a few procedural items and to introduce staff
11 exhibits.

12 Mr. Frink.

13 MR. FRINK: Yes, Mr. Brown, good morning.

14 I don't have any other procedural items right now. I
15 would like to introduce the staff exhibits. Staff exhibits
16 are identified in detail on Page 6 of the hearing notice.
17 Exhibits 1 through 6 are the Division of Water Rights files
18 on the applications and permits under consideration.

19 Exhibit 7 is the State Water Resources Control order
20 dated October 9th, 1992, on temporary transfer of water
21 under Permits 1267 and 2492.

22 Exhibit 8 is a 1985 negative declaration by Yuba City
23 for delivery of up to 35,000 acre-feet of water per year.

24 Exhibit 9 is a negative declaration to expand its place
25 of use and related changes that have been requested by

1 Oroville-Wyandotte Irrigation District.

2 And the last staff exhibit is the U.S.G.S hydrologic
3 and climatologic information for the North Fork Yuba River,
4 the South Fork Feather River and the Feather River.

5 I would request that the staff exhibits be admitted
6 into the record at this time.

7 H.O. BROWN: Are there any objections to the admission?

8 MR. BABER: No objection, Mr. Chairman.

9 MR. LILLY: Mr. Brown, we do not object to those files
10 coming into evidence, and actually we have a request for
11 clarification. There are three joint water rights licenses
12 for this project that were issued by the State Board several
13 years ago for the hydropower generation. I notice the
14 application numbers are 13676, 13956, and 14112. And while
15 we don't know that they are going to be directly relevant,
16 we would ask that they also be given the same treatment to
17 the extent that either staff or any of the parties would
18 like to refer to those files since they are related to the
19 same project.

20 We ask they basically be added to the list of staff
21 exhibits. And then the only other comment I have is,
22 obviously, these files are very voluminous and contain some
23 hearsay statements that otherwise might not be admissible.
24 We just request clarification from the Board that these
25 documents will be admitted into the record subject to the

1 Board's limitations on the use of hearsay evidence.

2 H.O. BROWN: Thank you, Mr Lilly.

3 Any objection to that?

4 MR. BABER: No objection, Mr. Chair.

5 MR. FRINK: Mr. Brown, I don't have any objection
6 right now to including any of the documents in those files.
7 However, not having looked at them and not even knowing how
8 large they are, I would be a little hesitant to say that all
9 the documents in those files would be a part of the
10 administrative record to this proceeding.

11 I wonder if there is a question that arises or if there
12 is a need to look at any of the documents in those files, if
13 the parties could identify the documents at the time the
14 question arises. The Board certainly could take official
15 notice of the licenses themselves for the project.

16 MR. BABER: I would support Mr. Frink's request.

17 MR. LILLY: I think Mr. Frink's suggestion is a good
18 one, Mr. Brown.

19 H.O. BROWN: With that addition to the offer of staff
20 exhibits into evidence, they are so accepted.

21 I will now administer the oath.

22 Those giving testimony, would you please stand and
23 raise your right hand and answer I do if you do.

24 (Oath administered by H.O. Brown.)

25 H.O. BROWN: Mr. Storey, we will go with policy

1 statements now and you may present yours.

2 MR. STOREY: Thank you, Members of the State Water
3 Resources Control Board, ladies and gentlemen. My name is
4 Dale Storey. I currently live in Oregon House in
5 northwestern Yuba County, and I have lived in the same area
6 for 35 years. I have been a member of the Board of
7 Directors of the Yuba County District since 1992 and
8 currently am the president of the Board. I also was the
9 president of the Board in 1996.

10 The present hearing involves issues of critical
11 importance to the Yuba County Water District. As is
12 discussed in detail in the testimony of the district's
13 General Manager, Dennis Parker, and district engineering,
14 Steve Grinnell, the district presently is water short. That
15 is growth and water use within the district presently is
16 limited because we do not have enough water to meet our
17 customers' water needs.

18 The most dramatic evidence of this shortage is our
19 waiting list of new irrigation customers. Presently there
20 are over 70 requests on this list. All of these people need
21 additional water supplies for irrigation. However, the
22 district cannot supply any more water to them because the
23 district's limited water supplies. Additional future water
24 needs for the district are discussed in detail in Mr.
25 Grinnell's testimony.

1 If the district can obtain additional water supplies to
2 supply these needs, then additional economic development
3 which is desperately needed in Yuba County and particularly
4 in our district, can occur. Without additional water, this
5 economic development probably will not occur.

6 Fortunately, there is a solution to this problem. The
7 district already receives some water from the South Fork of
8 the Feather River Project pursuant to two water right
9 permits issued by this Board and an agreement between our
10 district and the Oroville-Wyandotte Irrigation District.

11 After 2010, when OWID's current power purchase contract
12 with the PG&E Company expires, it will be possible for the
13 Yuba County Water District to receive additional water
14 supplies from the South Fork Project without having any
15 impact on OWID's reasonable water needs and without
16 significantly impacting hydroelectric power generation.

17 For this hearing we ask the State Water Resources
18 Control Board to recognize the Yuba County District's
19 reasonable water needs and not to take any actions that
20 would prevent the Yuba County Water District from obtaining
21 these desperately needed additional water supplies in the
22 future.

23 Thank you for giving me this opportunity for this
24 policy statement.

25 H.O. BROWN: Thank you, Mr. Storey.

1 Mr. Doolittle.

2 MR. DOOLITTLE: Mr. Brown, staff, good morning.

3 My name is Dave Doolittle. I am Vice Chair of Yuba
4 City, and I will be the mayor beginning next month.

5 We are deeply concerned about the issue before you
6 today related to the City of Yuba City being included within
7 the place of use for the permit for Yuba County Water
8 District supply for 4,500 acre-feet from Miners Ranch
9 Reservoir. This is a critical issue of water supply for our
10 city.

11 I would like to start out with a history related to
12 Yuba City drinking water. In the 1960s Yuba City residents
13 had consistent complaints about the drinking water the city
14 provided. Groundwater was used as source water without any
15 treatment. The water was hard and smelled much like rotten
16 eggs from hydrogen sulfide. Yuba City Council at that time
17 directed staff to investigate the options of using Feather
18 River as a source water.

19 In 1958 a permit was obtained from the State Water
20 Rights Board to appropriate 15.6 cubic feet per second from
21 the Feather River, except during the months of July and
22 August. The City also entered into standard State Project
23 water supply contracts with the Department of Water
24 Resources.

25 In 1965 with water supply contract in hand, the City

1 conducted a public vote related to the issuance of bonds to
2 fund construction of a water treatment plant. Voters were
3 asked if they wanted to significantly increase their water
4 rate to fund a new surface water plant. The electorate
5 passed the issue with a 92 percent approval rate.

6 Also in 1965, the City entered into an agreement with
7 Yuba County Water District to supply 4,500 acre-feet of
8 water. The water would be delivered April through October.
9 This contract firmed up summer water supply and allowed the
10 City to comply with a hammerlock provision of the State
11 Water Project contract.

12 Without additional summer supplies from Yuba County
13 Water District the hammerlock provision required that the
14 State Water Project supply all water to the City, no other
15 contract or supply would be utilized.

16 In early 1969 the new surface treatment plant went on
17 line and the wells were placed in standby mode. To the best
18 of our knowledge, the wells have not been used since that
19 time and several no longer meet the Department of Health
20 standards for water quality. Our Yuba County Water District
21 agreement for 4,500 acre-feet during the summer months
22 provide crucial water supply for our community.

23 If Yuba City is not included within the permitted place
24 of use, the only current water contract that can be used for
25 water is the State Water Project. That contract had a

1 maximum supply of 9,600 acre-feet. Recent delivery of State
2 Water Project Water has been reduced by up to 40 percent due
3 to the lack of supply, the City's current annual use of
4 approximately 12,000 acre-feet. Loss of the Yuba County
5 Water District contract would have extreme detrimental
6 effects for our community.

7 The SWP cannot be relied upon for the City's needs.
8 Without the Yuba County Water District contract, there will
9 not be enough water to meet the existing needs of our
10 community, and certainly not enough for our future growth.

11 Yuba City is caught between two enemies that are trying
12 to resolve the difference, and we wound up being used as a
13 pawn. Our contract with Yuba County Water District has been
14 in place essentially unchanged, other than for financial
15 changes, for the past 35 years.

16 I urge your Board to allow Yuba City to be included
17 within the place of use of the permit under the Yuba County
18 Water District supplies for 4,500 acre-feet of water to Yuba
19 City. And I thank you very much for your time.

20 H.O. BROWN: I note that OWID and YCWD have submitted
21 petitions that are being considered in this hearing. Water
22 districts have protested the changes requested by one
23 another. We will hear the case in chief of OWID on its
24 petition for change and time extension and then its protest
25 of YCWD's petition changes. After that we will hear YCWD's

1 case in chief on its petition and its protest for OWID
2 changes. We will start with Oroville-Wyandotte.

3 Mr. Baber, you are up.

4 MR. BABER: Mr. Chairman, thank you.

5 H.O. BROWN: Mr. Frink has asked me if we have all the
6 policy statements, and we only have the two cards.

7 Did I miss anyone on policy --

8 MR. LILLY: Mr. Brown, as I mentioned, I have Mr.
9 Belza's here, which I would be glad to submit right now
10 since it is a policy statement, if that is acceptable.

11 H.O. BROWN: All right. Would you like to read that
12 into the record or just submit the paper?

13 MR. LILLY: I am happy to just submit it, just to save
14 time. I assume you will all read it.

15 MR. BABER: Mr. Chairman, I will stipulate that the
16 policy statement is the same as he presented as evidence?

17 Is it same or changes?

18 MR. LILLY: Well, the only thing that is different is
19 it is now called a policy statement and he has signed it.
20 Before we thought he was going to be here; we wanted to make
21 sure his signed statement is entered.

22 MR. BABER: Is it the same as NOI, right?

23 MR. LILLY: It is the same as Exhibit YCWD-1, which we
24 will now not be submitting.

25 H.O. BROWN: It is entitled Policy Statement.

1 MR. LILLY: Yes.

2 H.O. BROWN: We will accept that in as a policy
3 statement.

4 MR. LILLY: Thank you, Mr. Brown.

5 H.O. BROWN: Pardon the interruption, Mr. Baber.

6 MR. BABER: Just a couple of maybe some clerical
7 corrections here. Kathy asked me at the beginning when we
8 came in, kind of helped set up the overheads, that we strike
9 from the record on Mr. Onken's testimony, which is our
10 Exhibit E, on Page 1, the right column of his personal data,
11 starting with date of birth, that whole column down to
12 Social Security --

13 MR. LILLY: It is Exhibit D.

14 MR. BABER: You're right, Exhibit D, the right-hand
15 column, and I apologize. That is my mistake and just
16 getting a copy of Steve's resume and putting that in as his
17 statement of qualifications. I should have stricken that
18 before putting it in.

19 With that, also Mr. Chairman, on Mr. Glaze's testimony,
20 on Page 1, that would be Exhibit C, on the first page, four
21 numeral errors on the second line where it says, "Purpose of
22 Water Rights Permit 1267," and then it says "12,168,"
23 should eliminate the one there; that should be 1268.

24 And then going down to paragraph --

25 H.O. BROWN: Staff, do you have that?

1 MR. BABER: Going down to Paragraph 2, where it says
2 2000 acres, Mike will clarify that in oral testimony. That
3 should be 6,200 acres which is current as of this morning.

4 Then Paragraph 3, instead of 2979, that should be 2879
5 for the application on the second line.

6 MR. GLAZE: The other way around, Bill.

7 MR. BABER: The other way, 2979 instead of 2879.

8 And then on Paragraph 4, the third line where it says
9 1267, 1268, 1271 and 1292, that should be 2492 for the
10 permit number.

11 With the exception of those clerical errors, I would
12 ask, and I don't have my exhibit identification index, the
13 columns for introduced, admitted into evidence, and timing,
14 so I am going to have to ask you to bear with me on that.
15 OWID has six exhibits, including the last one. We've
16 numbered them by a letter, Exhibits A through F. Exhibit F
17 is the proof of service by mail. We mailed all of the
18 exhibits to the appearing parties.

19 We would ask that those all be marked for
20 identification, and then we will introduce them at the close
21 of testimony. Is that satisfactory with the staff?

22 MS. MROWKA: That is fine.

23 MR. FRINK: The exhibits are marked. You can introduce
24 them as you go through.

25 MR. BABER: All right.

1 which were contemplated by Part II, Paragraph F of a 1959
2 agreement between OWID and Yuba County Water District.

3 Additionally, then OWID petitions for extension of time
4 to complete application of water to beneficial use under two
5 of those permits, which are 11516 and 11518 in which OWID is
6 a copermittee with Yuba County Water District.

7 Let me give you a brief history which I am sure your
8 Board has heard a few times over the last 50 years.

9 In 1953 our deceased senior partner, Jack Minasian,
10 represented Oroville-Wyandotte Irrigation District in
11 hearings in Oroville in March of 1953 for four days,
12 representing Oroville-Wyandotte Irrigation District, March
13 4th to March 6th, and again on February 8th and 9th in 1955
14 in Oroville. Yuba County Water District and the County of
15 Yuba were also present represented by, I believe, the late
16 Martin McDonough.

17 The focus of those -- that testimony in those hearings
18 resulted in Decision 838, which is approximately 90 pages
19 consisting of the factual background and underpinnings of
20 what is a mammoth power project called the South Fork
21 Project. As a result of Decision 838, which was concluded
22 in 1955, the State Board believed that from all of the
23 testimony it received that there must be a cooperative joint
24 project entered into between two districts, OWID and YCWD.

25 The Board ordered that in order to facilitate

1 development of that project that there be an agreement
2 entered into between those two districts and that there
3 should be extensive time, additional time, by which those
4 two districts could sit down and resolve differences, which
5 differences included financing and cooperative problems in
6 the development of reservoirs, storage projects and
7 conveyance facilities for the building of those projects.

8 In 1956 there was a supplemental decision to D 838
9 signed by then the California State Engineer, Harvey Banks,
10 in which it was concluded that a joint project was indeed an
11 absolute necessity and there must be an agreement entered
12 into between those two districts, and the agreement must
13 conclude the financing and cooperation problems from the
14 June '56 hearings. There was conflicting testimony as to
15 what projects were going to be built and what conveyance
16 facilities as a part of those projects would be built.

17 Continuing out of D 838 was our D 907. Because as a
18 result of about a year and a half or two years of extension
19 of time given by the State Board to complete an agreement,
20 an agreement was, in fact, entered into in 1958, in
21 May. And that agreement was submitted to the State Board.
22 As a result of the agreement, the State Board issued D 907
23 and implemented the agreement and made it a part of all six
24 permits or particularly 11516 and 11518.

25 In D 907, in fact, it says the permits issued pursuant

1 to application, gives the number, shall be subject to an
2 agreement between Oroville-Wyandotte and Yuba County Water
3 District dated March 21, '58, filed of record as OWID, et
4 cetera.

5 Now with that background, we come to October 16, 2000.
6 And this is a request to extend the M&I uses, purposes of
7 uses to those six permits by OWID. That request is
8 contemplated by the 1959 agreement. And that is -- I can't
9 find the part and page number of that six-page agreement,
10 but I will give it to you as we go through the testimony.

11 As a part of the agreement, excuse me, as a part of the
12 request, OWID is asking that the Board extend the time for
13 completing the application of water to beneficial use under
14 just two of the six permits, 516 and 518, to be the same
15 time as OWID's extension of time for place of use given by
16 this Board back in 1985, through to December 1, 2004, and I
17 believe that request is joined by YCWD.

18 As a part of -- I think that is all I can give you for
19 my opening statement. Of course, we protest the application
20 of Yuba County Water District to extend the City of Yuba
21 City into its place of use because that first requires
22 sitting down and amending the '59 agreement and cooperating,
23 without coming before your Board, and that is a part of the
24 permit.

25 Then I would ask, Mr. Chairman, if I could proceed with

1 the testimony of Michael Glaze summarizing his written
2 testimony.

3 MR. FRINK: Mr. Brown.

4 Mr. Baber, I just want to clarify something for the
5 record. I believe, Mr. Baber, you referred to something as
6 -516 and -518.

7 MR. BABER: Correct.

8 MR. FRINK: And I believe you meant to refer to Permits
9 11516 and 11518; is that correct?

10 MR. BABER: That is correct.

11 MR. FRINK: Thank you.

12 DIRECT EXAMINATION OF OROVILLE-WYANDOTTE IRRIGATION DISTRICT

13 BY MR. BABER

14 MR. BABER: Mr. Glaze, would you summarize the first
15 half a page of your written testimony for the Board, please,
16 which testimony is Exhibit C, and I would ask for your
17 assistance, Mr. Onken, by switching on the overhead and
18 showing the South Fork Project facility. We will get into
19 those rather quickly after Mr. Glaze tells us about the
20 formation of Oroville-Wyandotte and how long it's been in
21 existence.

22 MR. GLAZE: First of all, Mr. Chairman, staff, good
23 morning. My name is Michael Glaze. My mailing address is
24 P.O. Box 581, Oroville, California 95965. I am the General
25 Manager of the Oroville-Wyandotte Irrigation District, and I

1 have been with the District since 1992.

2 As Chairman Brown correctly cited earlier, our purpose
3 for being here is threefold. First of all, to request that
4 you add industrial and municipal as uses within our place of
5 use.

6 Two, that you approve expansion of our place of use
7 only to cover the existing service area of our district
8 within Butte County.

9 And thirdly, to approve our request to extend time on
10 permits 11516 and 11518 to complete application of water to
11 beneficial use under those permits.

12 The District was formed in 1919. Acquired probably
13 well over a hundred miles of open earth and ditches from two
14 land and water companies who also had acquired those same
15 open earthen ditches from mining companies. Those ditches
16 were built circa 1860 and have been in operation essentially
17 in the same configuration and status since that time.

18 Beginning in shortly after the formation of the
19 district, the District began filing applications and in 1923
20 three permits, 1267, 1268 and 1271 were issued to the
21 District, and actually commenced the South Fork Project that
22 we will talk about quite a bit today. 122492 came shortly
23 thereafter. It was issued in 1926. And D 907 were issued
24 in accordance with -- I'm sorry, permits 11516 and 11518
25 were issued in accordance with D 907 jointly to Yuba County

1 Water District in 1958, the agreement that Mr. Baber was
2 referencing.

3 Would you like me to go on, Mr. Baber?

4 MR. BABER: Yes. Mr. Glaze, if would you start with --
5 before you pick up the South Fork Project, let me ask you if
6 you would --

7 Do you have a copy of the agreement in front of you?

8 MR. GLAZE: Yes, I do.

9 MR. BABER: Would you look at Part II E.

10 Would you tell the Board what that provides after you
11 read it, please.

12 MS. MROWKA: Mr. Baber, are you referring to
13 Oroville-Wyandotte Irrigation District Exhibit A?

14 MR. BABER: Yes, I am.

15 MR. LILLY: Excuse me, Mr. Brown. At this point I do
16 have an objection. We can all read the agreement and we
17 can make legal interpretations from it. And so I don't
18 think that question is proper for Mr. Glaze to testify as to
19 what this agreement provides.

20 If he wants to testify as to his understanding of it or
21 something like that, that might make sense. As far as
22 basically a pure legal conclusion of what the agreement
23 provides, he has no foundation for making that testimony.

24 H.O. BROWN: Thank you, Mr. Lilly.

25 MR. BABER: I would agree with that, Mr. Chairman. I

1 am going to ask Mr. Glaze's understanding of what Paragraph
2 2E provides.

3 H.O. BROWN: Thank you, Mr. Lilly.

4 MR. GLAZE: It permits Oroville-Wyandotte Irrigation
5 District to add additional places of use as may be necessary
6 from time to time within Butte County.

7 MR. BABER: Thank you.

8 Mr. Glaze, can we go into the next part of your
9 testimony, referencing the building of the South Fork
10 Project which I believe is 3, 4 and 5.

11 Would you summarize those for us, please.

12 MR. GLAZE: D 907 provided time for both agencies to
13 construct facilities in accordance with the permits that had
14 been issued. I believe OWID had to in 1964 construct
15 necessary facilities, reservoirs, hydroelectric facilities.
16 Those facilities were completed in 1962 and have been
17 operational and functional since that time and are today.

18 See, it is at least my understanding that OWID has
19 complied with D 907 relative to the construction of
20 facilities that were specified therein.

21 Our request for an expansion of our place of use is a
22 fairly modest change to the existing place of use
23 boundaries. Over time additional parcels have been added as
24 a result of incremental growth just within the
25 district. And our purpose for changing that place of use

1 boundary is primarily to clean up the differences between
2 what that boundary shows as being our place of use and those
3 few areas where, in fact, parcels are being served
4 irrigation water outside that boundary.

5 We have essentially drawn the new boundary, the
6 requested boundary change, to merely pick up those
7 additional parcels without any intent or effort to expand
8 the area for extensive growth beyond those. It essentially
9 represents our current service area.

10 We're asking that municipal and industrial purposes be
11 added to the use for all the permits within the district.
12 There is significant growth that is potential. We serve
13 certain areas that are presently within the city of
14 Oroville. One area specifically designated industrial, Unit
15 No. 4, is beginning to experience growth. In fact, there
16 are a few property owners within that industrial tract who
17 are currently involved in some industrial usage.

18 For municipal purposes we presently have no municipal
19 usage. However in anticipating that Yuba County Water
20 District will, in fact, be able in the future as a result of
21 appropriate agreements, amending the agreement with
22 Oroville-Wyandotte Irrigation District, be able to serve
23 Yuba City, the need for municipal uses being added would be
24 appropriate.

25 And as our area develops and grows, those two uses will

1 allow us to accommodate growth as it occurs in that area.
2 There will be no injury to any other user of water by
3 granting our request, including the enlargement of OWID's
4 service area under the above permits we've listed above. We
5 are suggesting that the changes are consistent with D 907 as
6 well as consistent with the 1959 agreement with Yuba County
7 Water District.

8 We are asking that the Board reject Yuba County Water
9 District's petition to include Yuba City within its place of
10 use. We are asking this only until an acceptable amendment
11 to the 1959 agreement occurs. We appreciate and understand
12 the significant need that the city of Yuba City has for this
13 water. It is not our desire that Yuba City not have this
14 water made available to it. In fact, we can --

15 As I have said, I have been with the district since
16 1992. Prior to my coming I can look back and see evidence
17 that OWID attempted on a number of occasions to facilitate
18 amendments to that agreement to facilitate the sale of water
19 by Yuba County Water District to Yuba City. And I know
20 since I have been with the district continued efforts have
21 been made to come up with an acceptable amendment to that
22 agreement.

23 It is not our desire that Yuba City not have water from
24 Yuba County Water District, but we are here to ask that you
25 reject that petition until the 1959 agreement be amended

1 appropriately.

2 MR. BABER: Mr. Glaze, could I stop you there and ask
3 you a couple of things.

4 Is it your understanding -- a couple of things related
5 to the '59 agreement. Is it your understanding from -- I'm
6 trying to find the paragraph number -- from Paragraph 5A of
7 the '59 agreement that OWID owns all facilities and all
8 water rights on the South Fork Project?

9 MR. LILLY: Mr. Brown.

10 H.O. BROWN: Yes, Mr. Lilly.

11 MR. LILLY: At this point I object that the agreement
12 speaks for itself. Mr. Glaze's understanding of what he
13 thinks that paragraph might or might not mean is not really
14 relevant. It is up to the Board to do a legal
15 interpretation. And, furthermore, this is getting beyond
16 the scope of his direct testimony. There is nothing about
17 this in his direct testimony.

18 H.O. BROWN: Mr. Baber.

19 MR. BABER: Yes, Mr. Brown. The reason I am asking Mr.
20 Glaze for his understanding of that provision of the
21 agreement is because OWID is requesting that the extension
22 of time for permits 11516 and 11518 be made to accommodate
23 the beneficial use of water supplies basically for Yuba
24 County Water District because OWID owns all the water rights
25 and has to make these applications on behalf of Yuba County

1 Water District until 2010, when the license expires.

2 H.O. BROWN: Thank you, Mr. Baber.

3 Mr. Lilly.

4 MR. LILLY: I don't think that responded to my
5 objection in any way. I stand by my objection.

6 H.O. BROWN: I'm going to allow the question. We will
7 give it the weight of evidence.

8 MR. BABER: Thank you, your Honor, or, Mr. Chairman.

9 Want to answer that question, Mike, or do you need --

10 MR. GLAZE: My understanding and the reason we have
11 made the applications, filed the petitions as we have has
12 been my understanding that according to 5A of the '59
13 agreement, as it states and I am quoting, Oroville shall own
14 all facilities of the South Fork Project, entitled to all
15 work therefrom, except that upon completion of construction.
16 Then it goes on.

17 So that the District does own all the facilities, and
18 if I could just add to it, in 6A of that same agreement --
19 I'm sorry, 6B of that same agreement, again, one of the
20 reasons that we have filed a petition is it says, Oroville
21 is an operating district and has water rights that it has
22 used for many years and Yuba has no rights therein or
23 thereto, and Oroville has no obligation whatsoever to
24 deliver water to Yuba unless and until the construction of
25 the South Fork Project by Oroville is completed and then

1 only to the extent herein provided.

2 So it's been our understanding, certainly my personal
3 understanding, that the reason we need to file this petition
4 is in anticipation of an amendment to that agreement so
5 that, in fact, Yuba County Water District can provide water
6 to Yuba City.

7 MR. BABER: Thank you, Mr. Glaze.

8 Would you continue on with your testimony, summarizing
9 your testimony, starting at Paragraph 7, I believe, and
10 going through -- 7 I think is going to get into -- go ahead,
11 summarize 7 through 9, if you would please.

12 MR. GLAZE: We certainly oppose deletion of any terms
13 and provisions of the 1959 agreement between
14 Oroville-Wyandotte Irrigation District and Yuba County Water
15 District, certainly as those are conditions to Permits 11516
16 and 11518. The agreements and the allocation of the water
17 in that agreement or as specified in that agreement is
18 certainly an integral part of the jointly held water
19 rights.

20 We see the -- we see Yuba County Water District's
21 petitions as an attempt to force itself out of that
22 agreement, and we think that there was sufficient
23 deliberation by the Board numerous times in '53 and '55,
24 during the D 838 hearings. The Board obviously felt that
25 that agreement was a significant component of the permits.

1 We appreciate the fact that having an agreement attached to
2 permits is -- makes more work for the Board, especially more
3 work for the staff relative to --

4 MR. LILLY: Excuse me, Mr. Brown. This is supposed to
5 be a summary of testimony. He could read the one sentence
6 that talks about this a lot quicker than this alleged
7 summary which is now going on for many sentences.

8 I object on the grounds that is beyond the scope of his
9 testimony and is not appropriate summarization of his
10 testimony.

11 H.O. BROWN: Mr. Baber.

12 MR. BABER: Mr. Chairman, I think that Mr. Glaze is
13 entitled to the right to explain his direct testimony, and
14 he is doing that and summarizing it and is subject to
15 comment and cross-examination.

16 H.O. BROWN: Mr. Lilly.

17 MR. LILLY: Nothing further, your Honor. I stand by my
18 objection.

19 H.O. BROWN: Overruled.

20 Proceed.

21 MR. GLAZE: The complexities of the agreement make it
22 difficult for the Board and staff to interpret the
23 agreement. But I don't think that was the intent of the
24 Board, that staff and the Board be the interpreters of the
25 agreement. I think clearly the decision 907 implied or

1 stated that only when there was an acceptable amendment to
2 that agreement brought back to the Board by the two
3 districts that the Board would consider those kinds of
4 changes.

5 And so we are opposed certainly to any deletions in the
6 terms of that agreement and feel that they're integral to
7 the permits that the Board issued.

8 Approving of the petitions that we've submitted will
9 not result in any adverse impacts to public trust
10 resources. The South Fork Project is built, is functioning,
11 is operating and does provide significant benefits both to
12 the environment, fish and the public, provides or allows for
13 the provision of domestic, agricultural and recreational
14 water services to both Oroville-Wyandotte Irrigation
15 District and Yuba County Water District as well as providing
16 funding for Oroville-Wyandotte Irrigation District to expand
17 services within its service area.

18 MR. BABER: Thank you Mr. Glaze.

19 Let me stop you there and through Paragraph 9, and I
20 note for the Board and staff that CALSPA is not present here
21 today, I don't believe.

22 Is anyone here from California Sportfishing Alliance?

23 Not present. So I'm assuming that that -- and there
24 was no NOI submitted by them, so I am assuming that their
25 testimony submitted in August is now going to be considered

1 by this Board in determining the request by OWID and Yuba
2 County Water District.

3 Is that right?

4 MR. FRINK: I don't believe that they submitted any
5 sort of written statement or testimony. They did submit a
6 protest in August. But you are correct, they are not here
7 and the record will not include any evidence that they
8 submitted because they have not submitted any written.

9 MR. BABER: Thank you, Mr. Frink.

10 Mr. Glaze, could you finish off Paragraph 10 and 11 of
11 your testimony, giving an oral summary, please.

12 MR. GLAZE: Our request for time extension on Permits
13 11516 and 11518 is that they be extended to be coterminous
14 with the other four permits, 1267, 1268, 1271 and 2492 which
15 have a December 1st, 2004 expiration date. The request for
16 that date or for being coterminous is that so, in fact, it
17 will be easier for the Board to deal with all six of them
18 because, certainly, we expect and will be back before you at
19 that time requesting that they -- further extension on all
20 six of the permits. If you can deal with six at the same
21 time, as opposed to four and then two, we think that would
22 be better use of all of our time.

23 Finally, we think that not extending those permits and
24 even to revoke those permits, referring to 11516 and 11518,
25 would be completely unjustified. It would certainly damage

1 Oroville-Wyandotte Irrigation District's ability to supply
2 consumptive water for its customers and would also eliminate
3 Yuba County Water District's use of that water. The power
4 project would continue to function under its own license.

5 If those permits were not extended, we'd have a hydro
6 project functioning, but would not have water available
7 under those permits for consumptive uses.

8 MR. BABER: Thank you, Mr. Glaze.

9 And, Mr. Chairman, and members of the staff, we'd ask
10 -- I will wait till the end of the testimony.

11 Mr. Onken, I would ask you to summarize Exhibit E,
12 Paragraphs -- take the first paragraph. If you would
13 summarize your written testimony, summarize the first
14 paragraph of your testimony, referring to the overhead
15 where possible. I don't think you will get into Exhibit 2
16 which is the YCWD diversion until you get into the second
17 paragraph a little below Sly Creek Reservoir.

18 Is that correct?

19 MR. ONKEN: Correct.

20 MR. BABER: Could you summarize the first paragraph of
21 your testimony, please.

22 MR. ONKEN: Good morning, Mr. Chairman, staff. My name
23 is Steve Onken. I am the power division manager for
24 Oroville-Wyandotte Irrigation District, and I have held that
25 position since 1981. My responsibility is to direct the

1 maintenance and operations of four powerhouses and eight
2 dams on the South Fork of the Feather River. And this
3 morning I would like to explain to you the operations and
4 how the project is laid out so that hopefully you will have
5 a better understanding of where these locations are on the
6 map. So I'm going to the overhead.

7 MR. BABER: If you would start at the top with Little
8 Grass Valley and work down. I don't know if we can see
9 Little Grass Valley.

10 MR. ONKEN: I was going to start, just to show them.
11 Our project terminates at just below Lake Oroville. This is
12 Oroville Dam and you can see the Oroville Project, which is
13 the start of the State Water Project. We are upstream of
14 Oroville on the South Fork. On the map this is the North
15 Fork here and the Middle Fork. And we -- our project is
16 located on the South Fork of the Feather River.

17 MR. BABER: Is that Little Grass Valley at the very
18 top there, Mr. Onken?

19 MR. ONKEN: Yes, that is correct.

20 MR. BARBER: Why don't you start from there and work
21 your way down to Kelly Ridge.

22 MR. ONKEN: The project starts at Little Grass Valley
23 Reservoir, at elevation 5,000 feet. The reservoir is
24 approximately 95,000 acre-feet in storage. We release the
25 water down the South Fork of the Feather River to the South

1 Fork diversion dam, and there it is diverted out of the
2 South Fork through a tunnel and into the Lost Creek-Sly
3 Creek drainage or Sly Creek Reservoir, here, we can see on
4 the map.

5 We also have a diversion on a Sleet Creek, which is a
6 tributary to the North Fork of the Yuba. There we have a
7 diversion dam and a tunnel which diverts the water from
8 Slate Creek over into Sly Creek Reservoir. Part of
9 Decision 907 and 838 and three-party agreement that we have
10 with the Yuba County, Yuba County was to build a diversion
11 facility on Canyon Creek. And on this map Canyon Creek runs
12 parallel to Slate Creek here and is also a tributary to the
13 North Fork of the Yuba. So it is located here on the map
14 here.

15 MR. BABER: Let me stop you right there.

16 Canyon Creek you say was to be built as a part of the
17 South Fork Project. You testified --

18 MR. ONKEN: It was to be built by Yuba County Water
19 District.

20 MR. BABER: As a part of the -- was it as a part of D
21 838 and D 907?

22 MR. ONKEN: It was described in the three-party
23 agreement between PG&E, OWID and Yuba County Water District.
24 It was also described in the 1959 Yuba County Water
25 District-OWID agreement.

1 MR. BABER: Was it also described in Decision 838?
2 Have you read that?

3 MR. ONKEN: I have read 838. I do not recall it
4 described in 838.

5 MR. BABER: Go ahead.

6 MR. ONKEN: That project was never built, the Canyon
7 Creek Project. Going back to Sly Creek Reservoir, Sly Creek
8 Reservoir, the water is then passed through our Sly Creek
9 Powerhouse which is at the base of the dam. Water then goes
10 into Lost Creek Reservoir. And at Lost Creek Reservoir the
11 water is then diverted in the Woodleaf Tunnel, Woodleaf
12 Powerhouse Tunnel, which you can see the dashed line here
13 and then the solid line which represents the penstock or
14 pipe that carries the water to Woodleaf Powerhouse.

15 At the penstock we have a diversion to what we call the
16 Forbestown Ditch or we refer to it sometimes as SF-14, South
17 Fork gauge No. 14. And that is a delivery point to the
18 Forbestown Ditch. I have a little bit better map in
19 Exhibit 2, and we will look at that in a minute.

20 The water then goes to -- the majority of the water
21 then goes to the Woodleaf Powerhouse, where power is
22 generated and water is then discharged into the South Fork
23 of the Feather River and picked up with the Forbestown
24 Diversion Dam. I am looking at it and the diversion dam
25 which is located right here on the map.

1 The water then is diverted into the Forbestown Tunnel,
2 runs about four miles, the Forbestown Penstock, is dropped
3 through the Forbestown Powerhouse.

4 MR. BABER: Stop you there.

5 When it goes through the Woodleaf Powerplant, does then
6 a part of it go into the Forbestown Tunnel and a part of it
7 go into the Forbestown Ditch?

8 MR. ONKEN: Part -- the Forbestown Ditch -- what
9 happens is the Woodleaf Penstock on Exhibit 2 --

10 MR. BABER: To the Board and staff, if you would, and
11 the participants here, now that is the Woodleaf Penstock?

12 MR. ONKEN: The Woodleaf Penstock. The water is then
13 diverted from the Woodleaf Penstock into the Forbestown
14 Ditch.

15 MR. BABER: Right up at the top there where it says
16 Woodleaf, you've written in Woodleaf, there are a couple of
17 lines under that.

18 MR. ONKEN: Represents the tunnel. The dashed line of
19 the tunnel.

20 MS. MROWKA: Excuse me, Mr. Baber, is Mr. Onken
21 currently referring to his Exhibit 2?

22 MR. BABER: That is correct, Kathy. That is Exhibit 2
23 to Mr. Onken's testimony.

24 So that is -- there is a two-part diversion there after
25 it leaves the Woodleaf Powerplant it goes -- part of it goes

1 to the tunnel, down the Ponderosa and part of it goes into
2 the Forbestown Ditch; is that correct? MR. ONKEN:

3 The water -- the vast majority, meaning 99 percent, of the
4 water goes to the Woodleaf Powerhouse. According to the
5 1959 agreement, Yuba County Water District is entitled to
6 3,700 acre-feet at this point and Oroville-Wyandotte
7 Irrigation District is entitled to 3,720 acre-feet according
8 to the Sly Creek agreement that was negotiated with PG&E in
9 1979.

10 MR. BABER: Go ahead, take the Board through the water
11 as it is going through the Forbestown Ditch.

12 MR. ONKEN: The water is then delivered down the
13 Forbestown Ditch. This is an unlined, earthen ditch left
14 over from the 1850s, gold mining days. The water then runs
15 approximately nine miles to the Forbestown area.

16 MR. BABER: How does it cross Oroleve Creek?

17 MR. ONKEN: Oroleve Creek is -- the reason I show this
18 is that it is a diversion on Oroleve Creek which does
19 deliver some water or supplement some water to the
20 Forbestown Ditch during the spring months of the year.
21 These are pre-1914 water rights that OWID holds on Oroleve
22 Creek.

23 MR. BABER: Go ahead.

24 MR. ONKEN: The water then continues down the
25 Forbestown Ditch to the Forbestown area, and there we have a

1 weir that measures the water before it is delivered to Yuba
2 County Water District. At that point we deliver water to
3 Costa Creek which is an irrigation delivery to YCWD. OWID's
4 water and Yuba County's raw water supply, Yuba County Water
5 District's raw water supply, continue on down the ditch to
6 Forbestown. And there the water is diverted to Yuba County
7 Water District's water treatment plant. Water is treated
8 and then distributed from there to its customer for domestic
9 service.

10 Oroville-Wyandotte Irrigation District's water
11 continues on down the ditch for another 24 miles
12 approximately, and the ditch terminates in the Bangor area.

13 MR. BABER: Now could you describe what water gets into
14 Costa Creek and into Dry Creek?

15 MR. ONKEN: Again, this is based upon the monthly
16 deliveries requested by Yuba County Water District. The
17 water is diverted --

18 MR. BARBER: Is that Yuba County Water District's 3,700
19 acre-feet?

20 MR. ONKEN: 3,700 acre-feet.

21 MR. BABER: Pursuant to the '59 agreement?

22 MR. ONKEN: Correct.

23 MR. BABER: If I can ask you, take you away from
24 Exhibit 2 and put back Exhibit 1. Now you're --

25 MR. ONKEN: Now we are back on the penstock here,

1 Woodleaf Powerhouse.

2 MR. BABER: Take the Board through the rest of the
3 water supplies.

4 MR. ONKEN: The water then continues, is diverted to
5 the Forbestown Tunnel, and the Forbestown Tunnel then
6 carries the water to Forbestown Powerhouse, which is
7 located here on the map.

8 We drop the water approximately 870 feet through
9 Forbestown Powerhouse, and it is discharged into Ponderosa
10 Reservoir, at this location. In an average year we produce
11 -- the watershed produces about 340,000 acre-feet.
12 Approximately half of that water, 170,000, is discharged
13 into Lake Oroville, spilled into Lake Oroville. The other
14 half of the water, 170,000 acre-feet continues down the
15 Miners Ranch Canal, which parallels the shoreline of Lake
16 Oroville.

17 It then goes into the Miners Ranch Tunnel,
18 approximately three miles in length, and then the water is
19 discharged into Miners Ranch Reservoir. According to the
20 1959 agreement, Yuba County Water District is entitled to a
21 4,500 acre-foot allocation at Miners Ranch Reservoir. The
22 intent was, and the agreement says this, that it was to go
23 down the Bangor Canal to the northern boundary of Yuba
24 County where it would then be available for use in Yuba
25 County by Yuba County Water District.

1 MR. BABER: In fact, Mr. Onken, wasn't Yuba County
2 Water District also given the right to enlarge the Bangor
3 Canal by the '59, '58 agreement?

4 MR. ONKEN: Correct. They could spend the additional
5 money to enlarge the Bangor Canal to carry this water, plus
6 according to the agreement an allocation of 10,500
7 acre-feet, which could be diverted from November 1st to
8 April 15 -- I'm sorry, to May 1st. November 1st to May
9 1st.

10 This 10,500 acre-feet specifically calls out that it be
11 delivered down the Bangor Canal and be stored in a reservoir
12 that Yuba County Water District was to construct. This
13 reservoir was never constructed and, therefore, the 10,500
14 acre-feet has never been delivered to Yuba County Water
15 District.

16 MR. BABER: Has the Bangor Canal ever been requested by
17 Yuba County Water District to be enlarged or have they ever
18 attempted to enlarge it?

19 MR. ONKEN: No.

20 MR. BABER: Going back a little bit, Mr. Onken, where
21 was New York Flat to have been built?

22 MR. ONKEN: On this map, New York Flat Reservoir would
23 have been located about here on the map. And the intent of
24 New York Flat Reservoir was that the Forbestown Ditch by
25 agreement could be enlarged by Yuba County Water District to

1 carry Canyon Creek water down the Forbestown Ditch and then
2 discharged it into New York Flat Reservoir.

3 There has been several proposals on different sides for
4 the New York Flat Reservoir, anywhere from 12,000 acre-feet
5 up to about 50- or 60,000 acre-feet.

6 MR. BABER: New York Flat Reservoir was to have been
7 built as part of Canyon Creek Project, both projects by Yuba
8 County Water District; is that correct?

9 MR. ONKEN: That's correct.

10 MR. LILLY: Excuse me, Mr. Brown.

11 H.O. BROWN: Mr. Lilly.

12 MR. LILLY: I would like the record to reflect when Mr.
13 Onken said about here, that is not very clear on the
14 transcript, and I would like the record to reflect that he
15 was pointing to an area just slightly south and west from
16 the town of Forbestown that is shown on his Exhibit 2. And
17 Mr. Onken can clarify that further, but I think the record
18 does need to be clear on what here means.

19 H.O. BROWN: Thank you, Mr. Lilly.

20 MR. LILLY: Also, beyond that, I do object to the line
21 of questioning as to the intent of the agreement and
22 whether or not Canyon Creek was to be part of the New York
23 Flat Reservoir. I think that is getting into legal
24 interpretation. We haven't had an adequate foundation for
25 this witness testifying to that, and it goes beyond his

1 written testimony.

2 H.O. BROWN: Mr. Gallery.

3 MR. GALLERY: Mr. Onken is referring to OWID's exhibit,
4 numerically, 1, 2, 3, 4 and 5. They were listed
5 alphabetically.

6 Can we clear that up?

7 MR. BABER: Yes, we can, Mr. Gallery. This is Mr.
8 Onken's Exhibit D, which is his testimony -- no, excuse me,
9 Exhibit E, which is his testimony. And this is Exhibit 1 on
10 the screen right now to his testimony and then Exhibit 2,
11 which was just on, was the SF-14, delivery through
12 Forbestown Ditch to YCWD.

13 There are three exhibits to Mr. Onken's testimony. His
14 testimony is Exhibit E, and the three exhibits are 1, 2 and
15 3.

16 MR. GALLERY: Thank you.

17 MS. MROWKA: As a point of clarification, State Board
18 staff will be denoting these as E1, E2, E3.

19 MR. GALLERY: Thank you.

20 H.O. BROWN: We recognize Mr. Onken is a professional
21 engineer and not an attorney or lawyer.

22 MR. LILLY: Thank you.

23 MR. BABER: Thank you, Mr. Brown.

24 Continue, Mr. Onken.

25 MR. LILLY: Excuse me. Mr. Brown, I don't think we

1 got a final determination from you. When he said here, are
2 we all in agreement that he was pointing to a place
3 immediately southwest from the town of Forbestown shown on
4 Exhibit E1?

5 H.O. BROWN: I think that you cleared that up, and I
6 saw no objections.

7 MR. ONKEN: I agree that is the correct location.

8 MR. LILLY: Thank you.

9 MR. BABER: Continue, Mr. Onken, please.

10 MR. ONKEN: The water for the South Fork Power Project
11 ended at Miners Ranch Reservoir. We have a water treatment
12 plant on the shoreline of Miners Ranch Reservoir.
13 Oroville-Wyandotte Irrigation District's domestic water is
14 then pumped out of the reservoir for treatment and delivery
15 to distribution to our customers.

16 About 80 percent of the water that is left from this --
17 90 percent of the water left is then sent down to the Kelly
18 Ridge Tunnel and Penstock to the Kelly Ridge Powerhouse.
19 There the power is generated and the water is discharged
20 into the Feather River.

21 And at that point the State Water Project picks it up
22 and then is continued south through the State Water Project
23 and by the Feather River.

24 MR. BABER: As a matter of fact, Yuba City diverts
25 further south out of the Feather River when the water leaves

1 the Kelly Ridge power plant in connection with an agreement
2 with Yuba County Water District, correct?

3 MR. ONKEN: That is correct. By doing so, instead of
4 taking the water at Miners Ranch as per the 1959 agreement,
5 and delivered down the Bangor Canal, they do derive some
6 power generation revenue by taking it through the Kelly
7 Ridge Powerhouse.

8 MR. BABER: By they you mean Yuba County Water District?

9 MR. ONKEN: Yuba County Water District.

10 MR. BABER: That is also a part of an amendment to the
11 '59 agreement that must be cleared up and negotiated with
12 Yuba County Water District by OWID; is that correct?

13 MR. LILLY: I am going to object again. That calls for
14 a legal conclusion.

15 MR. BABER: I will ask if that is your understanding?

16 MR. ONKEN: I will try to answer your question. The
17 agreement says that they will take the water --

18 H.O. BROWN: Wait a minute. When there is an
19 objection, the Chairman will recognize the objection and
20 then rule on it.

21 MR. BABER: Excuse me.

22 H.O. BROWN: I think one is -- your answer is
23 satisfactory and I will allow you to proceed from here on
24 now.

25 MR. BABER: Thank you.

1 Do you understand, Mr. Onken? What is your
2 understanding of the Yuba City supply of water being Yuba
3 County water out of the Kelly Ridge Powerhouse?

4 MR. ONKEN: The delivery point, according to the 1959
5 agreement, is Miners Ranch Reservoir Bangor Canal. It does
6 not -- the agreement does not state anything about
7 delivering the water through Kelly Ridge Powerhouse to the
8 Feather River.

9 MR. BABER: By virtue of taking the water through the
10 Kelly Ridge Powerhouse to the Feather River, Yuba County
11 Water District incurs some financial gain from selling the
12 power; is that correct?

13 MR. ONKEN: That's correct.

14 MR. BABER: Mr. Onken, I think I may have gone beyond
15 the first paragraph of your testimony. Could you just look
16 and see how much I covered and maybe summarize the remainder
17 of Page 1 of your testimony. Then we will get into -- I
18 know we've covered Exhibit 2 and we can get into your
19 Exhibit 3.

20 MR. ONKEN: I summarized everything but what is E3.

21 MR. BABER: Could you then place Exhibit E3 on the
22 overhead please.

23 MR. LILLY: Excuse me, Mr. Brown, I would just like the
24 same objection. Obviously, this witness has some
25 understanding of this agreement, but there is no foundation

1 that he qualifies to give legal interpretations of the
2 agreement. I would like clarification as to exactly what
3 weight his testimony is going to be given regarding Exhibit
4 E3.

5 MR. BABER: Mr. Chairman --

6 H.O. BROWN: Wait a minute. We will give the weight of
7 evidence to Mr. Onken's testimony, recognizing that he is a
8 professional engineer and not an expert in law.

9 MR. BABER: Thank you, Mr. Chairman.

10 Mr. Onken, could you describe what Exhibit E3 shows the
11 Board and the parties present, please?

12 MR. ONKEN: Yes. It is a simple summary of the
13 deliveries due to Yuba County Water District from the
14 contract, the 1959 agreement, and listing the paragraph, the
15 quantity of water, the generation value that it has
16 according to the contract that Yuba County can derive if
17 they do not use all of their water supplies. I will try to
18 explain that.

19 Paragraph 29 C-1 in the contract between
20 Oroville-Wyandotte, Yuba County and Pacific Gas & Electric
21 Company called for a 3,700 acre-foot allocation at the
22 Forbestown Ditch. If Yuba County does not utilize all of
23 their allotment, they can sell it back to Pacific Gas &
24 Electric Company for generation through Woodleaf, Forbestown
25 and Kelly Ridge Powerhouses and they can derive a maximum of

1 \$7.10 per acre-feet for the unused water. The delivery
2 point is the Forbestown Ditch. The conditions are that,
3 based upon the delivery schedule of Yuba County Water
4 District and they have a maximum flow of 12 cubic feet per
5 second in the ditch.

6 MR. BABER: Let's go now to Part II C-2.

7 MR. ONKEN: Part II C-2 of the contract calls for a
8 4,500 acre-foot allocation. This is water that Yuba County
9 currently sells to Yuba City by delivery of it through the
10 Kelly Ridge Powerhouse. They receive a fee of approximately
11 \$1.50 per acre-foot for the generation. The delivery point
12 is the Miners Ranch Reservoir. However, we currently take
13 it through the Kelly Ridge Powerhouse.

14 The delivery, per the Yuba County Water District
15 schedule, is a maximum flow of 16 cubic feet per second from
16 April 15 to November 1st of each year.

17 MR. BABER: No, Part II C-3.

18 MR. ONKEN: Part II C-3 is a 10,500 acre-foot
19 allotment. There is no generation value to this water
20 according to the contract. The delivery point is the Miners
21 Ranch Reservoir. It is based upon Yuba County Water
22 District to construct storage facilities. The water is
23 available to them between November 1st and May 1st of each
24 year. It's -- the water is to be delivered after the South
25 Fork Power Project is -- the reservoirs are full. And it's

1 based upon Kelly Ridge operating at full capacity.

2 And I can't read my own notes here.

3 It's to be delivered per Yuba County Water District's
4 schedule.

5 MR. BABER: Mr. Onken, has any part of that 10,500
6 acre-foot ever been delivered to Yuba County Water District?

7 MR. ONKEN: To date, no.

8 MR. BABER: Why?

9 MR. ONKEN: According to the contract, they were to
10 construct storage facilities at the end of Bangor Canal to
11 store that water, and that has not been constructed.

12 MR. BABER: You consistently refer to "according to
13 the contract" in your testimony here.

14 Are you referring to the 1958, 1959 agreement that was
15 approved by D 907?

16 MR. ONKEN: No. It is spelled out in the 1959
17 agreement, D 907, but it is also spelled out in the
18 contract between Yuba County Water District,
19 Oroville-Wyandotte Irrigation District and Pacific Gas &
20 Electric Company.

21 MR. BABER: When you refer to the contract in your
22 testimony, are you referring to the '58-59 agreement and to
23 the three-party agreement?

24 MR. ONKEN: That's correct.

25 There is a provision in Part II, Paragraph C-4 for

1 surplus water. When the reservoirs are full and we can --
2 and if Yuba County Water District has a need for the water,
3 there is a provision to deliver surplus water down the
4 Forbestown Ditch to Yuba County Water District's
5 facilities.

6 This has been exercised several times in the past
7 under certain conditions, and this water has been delivered
8 when requested.

9 MR. BABER: By OWID, I take it?

10 MR. ONKEN: By Oroville-Wyandotte to Yuba County Water
11 District.

12 MR. BABER: Mr. Onken, on the far left side of your E3
13 exhibit you have paragraph numbers, parts, that you have
14 been referring to, Part II C-1 through Part II C-4.

15 Are those all referenced in the 1959 agreement between
16 OWID and Yuba County Water District?

17 MR. ONKEN: They are referred in the contract between
18 Oroville-Wyandotte, Yuba County Water District and Pacific
19 Gas & Electric Company.

20 MR. BABER: Are they also referred to in the '59
21 agreement?

22 MR. ONKEN: I would have to -- yes, they are, yes,
23 because the '59 agreement is part of the contract.

24 MR. BABER: Part of which contract? Of the PG&E OWID?

25 MR. ONKEN: Correct.

1 MR. BABER: The '59 agreement is -- Strike that.

2 H.O. BROWN: You have three minutes, Mr. Baber.

3 MR. BABER: Thank you.

4 MR. FRINK: Excuse me, Mr. Brown, point of
5 clarification.

6 H.O. BROWN: Mr. Frink.

7 MR. FRINK: I am unclear exactly on the title and the
8 date of the contract that you are referring to between the
9 two districts and PG&E.

10 MR. ONKEN: It is Exhibit A of Oroville-Wyandotte
11 Irrigation District's testimony. And it says agreement as
12 amended between Oroville-Wyandotte Irrigation District and
13 Yuba County Water District, dated December 9th, 1959.

14 MR. FRINK: It was the other contract. I was uncertain
15 about the one with PG&E.

16 MR. ONKEN: That is part of the contract with PG&E. It
17 is -- the agreement between Yuba County and
18 Oroville-Wyandotte Irrigation District has been presented as
19 Exhibit A. The rest of the agreement that I referred to as
20 an operating agreement that I work by with
21 Oroville-Wyandotte and Pacific Gas & Electric Company.

22 H.O. BROWN: You still have three minutes.

23 MR. FRINK: Excuse me, Mr. Brown. Just so our record
24 is clear. I don't believe that the other agreement you are
25 referring to was identified as one of your exhibits; is that

1 correct?

2 MR. ONKEN: Only the 1959 agreement is shown as Exhibit
3 1.

4 MR. FRINK: Mr. Lilly, perhaps you can help me out.
5 Did you introduce the other agreement with PG&E as one of
6 your exhibits?

7 MR. LILLY: Well, we have submitted them; we haven't
8 introduced them yet.

9 Turn on the microphone.

10 Mr. Frink, we submitted as exhibits a 1960 power
11 purchase agreement between Oroville-Wyandotte Irrigation
12 District and PG&E and also a 1963 three-party agreement. If
13 you'd like, I can get the exhibit numbers of those.

14 MS. MROWKA: Mr. Lilly, those are Exhibits 15 and 16 to
15 your client.

16 MR. LILLY: That is correct. It might be useful, Mr.
17 Frink, if you just wanted to ask Mr. Onken which of those he
18 is referring to. I think he is referring to one or both of
19 those.

20 MR. BABER: Trying to get, Mr. Frink, the date of the
21 three-party agreement so we get this clarified.

22 MR. ONKEN: The information that I have presented is
23 all exhibits in Oroville-Wyandotte Irrigation District's
24 Exhibit A, December 9th, 1959 agreement.

25 MR. BABER: You were referring to a PG&E agreement as

1 well?

2 MR. ONKEN: And I should explain. That is my reference
3 to the operating documents between all three entities. The
4 information that's been presented here is the December 9th,
5 1959 agreement between Yuba County Water District and
6 Oroville-Wyandotte Irrigation District.

7 MR. BABER: That is all of the columns on the left side
8 of E3, that you had on the overhead there? Strike that.

9 H.O. BROWN: What is the document you are referring to
10 right now?

11 Mr. Onken, what is the document you are referring to?

12 MR. ONKEN: The paragraph shown here is the portion of
13 the operations and maintenance requirement of the
14 three-party agreement between PG&E, Oroville-Wyandotte and
15 Yuba County Water District, and it refers to the paragraph
16 numbers for the deliveries of water that are to be made to
17 Yuba County Water District.

18 MR. BABER: Mr. Onken, what is the date of that
19 document?

20 MR. ONKEN: Dated December 9th, 1959.

21 H.O. BROWN: You have a copy of that?

22 MR. FRINK: We can clarify this on cross-examination,
23 Mr. Brown. I didn't mean to hold up the hearing.

24 MR. BABER: That is Exhibit A of the agreement of
25 December 9th, 1959, but I think he is referring to something

1 else. PG&E has something which covers the December 9, '59
2 agreement. I think we can clear it up on cross or maybe
3 redirect.

4 MR. ONKEN: That is the only date that is shown on the
5 document.

6 MR. FRINK: I can clear up any questions I have.

7 H.O. BROWN: Let's proceed.

8 Mr. Baber, you have three minutes.

9 MR. BABER: Thank you, Mr. Chairman.

10 One thing I can suggest, that I can just make a copy of
11 that document Mr. Onken has in his hands and make it Exhibit
12 G, if that would be stipulated to be accepted by all parties
13 hereto.

14 MR. FRINK: I think it has already been identified as
15 one of Yuba County Water District's exhibits. We can clear
16 it up on cross-examination.

17 MR. BABER: Mr. Chairman, then the petitioner rests and
18 will before resting the petitioner asks that Exhibits A
19 through F be admitted into evidence.

20 MS. MROWKA: I would like to make a point of
21 clarification. In addition to that, Exhibits E1, E2 and E3,
22 I have Exhibit C1, an attachment to Mr. Glaze's testimony.

23 MR. BABER: Accepted?

24 H.O. BROWN: I am going to accept the exhibits after
25 cross and recross. I will accept them later.

1 MR. BABER: Thank you, Mr. Chairman.

2 H.O. BROWN: Let's take a 12-minute break.

3 (Break taken.)

4 H.O. BROWN: Come back to order.

5 Mr. Baber, that completes your direct. We will go to
6 cross.

7 Mr. Lilly.

8 ---oOo---

9 CROSS-EXAMINATION OF OROVILLE-WYANDOTTE IRRIGATION DISTRICT
10 BY YUBA COUNTY WATER DISTRICT

11 BY MR. LILLY

12 MR. LILLY: Thank you, Mr. Brown.

13 Mr. Glaze, Mr. Onken, as you know from introductions, I
14 am Alan Lilly. I represent the Yuba County Water District
15 in this matter. I do have come cross-examination
16 questions.

17 First of all, Mr. Onken, I will start with you. Kind
18 of follow the water as it goes from the watershed down
19 through the facilities and we will get to Mr. Glaze when we
20 get to distribution.

21 We have submitted Exhibit YCWD-15 which is the 1960
22 PG&E, OWID power purchase agreement.

23 Are you familiar with that agreement?

24 MR. ONKEN: Yes.

25 MR. LILLY: Do you have a copy of it in front of you?

1 MR. ONKEN: Yes.

2 MR. LILLY: Could you turn to Page 4 of that. The page
3 numbers are printed at the bottom. Page 4 is the beginning
4 of Appendix A.

5 MR. ONKEN: Yes, I have it.

6 MR. LILLY: One quick question, in the definitions, A21
7 defines the full operation date. And I think you testified
8 earlier this morning when the project went in operation.

9 What is your understanding as to what the full
10 operation date was for the South Fork Project?

11 MR. ONKEN: The full operation date would be the
12 acceptance date for the project, and that was to complete
13 all the terms of the contract.

14 MR. LILLY: You may not have the date, but do you have
15 the year when that occurred?

16 MR. ONKEN: The final acceptance date was early 1983.
17 The project actually went into operations November 1962.
18 There was additional testing that had to be completed before
19 acceptance would be made.

20 MR. LILLY: Thank you for the clarification.

21 Now could you go back to Page 1 of that same agreement,
22 numbered Page 1 of YCWD-15. In particular I am going to
23 refer to Paragraph 9. This I know is all second nature to
24 you, but the rest of us need to get a few basic facts out.

25 This Paragraph 9 says:

1 Following the full operation date and until
2 the termination of the contract Pacific --
3 (Reading.)
4 That is PG&E.
5 -- will pay Oroville -- (Reading.)
6 That is OWID.
7 -- for all power and energy delivered
8 hereunder. First there is the semiannual
9 rate of 1,564,000. (Reading.)
10 Do you see that?
11 MR. ONKEN: Correct.
12 MR. LILLY: So basically that payment is made twice a
13 year; is that correct?
14 MR. ONKEN: This is the bond debt payment for the
15 bonds, the \$1,564,000, yes.
16 MR. LILLY: Basically, I am sure the district would
17 like to keep the money, but that basically comes into the
18 district and is immediately paid to pay off the bond debt?
19 MR. ONKEN: That's correct.
20 MR. LILLY: Could you go -- kind of keep that one in
21 front of you, and then go to Exhibit D, as in dog, which is
22 your statement of qualifications.
23 MR. ONKEN: Yes.
24 MR. LILLY: In the first paragraph of text there under
25 experience, looks like the fifth line down, it says:

1 Prepare capital maintenance and operating
2 budgets exceeding 3.5 million annually.

3 (Reading.)

4 Do you see that?

5 MR. ONKEN: Correct.

6 MR. LILLY: Are these bond payments that we just
7 described, approximately one and a half million twice a
8 year, included in that 3.5 million budget?

9 MR. ONKEN: No, it is not.

10 MR. LILLY: Maybe you can just tell me what is included
11 in the \$3.5 million budget?

12 MR. ONKEN: That is the actual maintenance and
13 operations of the project. This is in addition to the bond
14 debt service.

15 MR. LILLY: If you can flip back to the 1960 agreement,
16 which was Exhibit YCWD-15, and particular on Page 15 of
17 that, and if you need you can take a minute to look at it.
18 I just have one question about it.

19 The bottom right-hand corner of Page 15 has a Paragraph
20 C-7 which carries over to the next page, and I am going to
21 ask you in simple terms: Under this paragraph does PG&E pay
22 OWID for OWID's cost of operating and maintaining the South
23 Fork Project?

24 MR. BABER: Wait a minute.

25 Mr. Chairman, I am going to object. I think Mr. Lilly

1 is going beyond the scope of direct examination here. If he
2 wants to get into this on calling him, Mr. Lilly on his part
3 of his examination, bringing it out on direct, that is
4 fine. But I don't think we have any testimony from Mr.
5 Onken on direct regarding the cost of operating and
6 maintaining the South Fork Project, nor is it relevant to
7 this proceeding to expand the place of use and to include
8 purpose of M&I and expand the place of use to service area
9 boundaries of OWID.

10 H.O. BROWN: Thank you.

11 Mr. Lilly.

12 MR. LILLY: Well, first of all, this Board's rules do
13 not require cross-examination be limited to direct. Second
14 of all, I think this is within the scope of direct because
15 his direct testimony included Exhibit D, which I am asking
16 him questions about, where this budget came from.

17 And then as far as the relevance, we are not going to
18 spend a lot of time on this, but we are interested in making
19 the point as to revenues may be available in the future to
20 these two districts for the potential construction of
21 additional facilities which Mr. Baber brought out during his
22 direct testimony earlier this morning.

23 H.O. BROWN: Mr. Baber.

24 MR. BABER: Mr. Chairman, first with reference to
25 Exhibit 15 of Yuba County Water District, Mr. Onken got

1 confused in his testimony in talking about Exhibit A, which
2 was the '59 agreement and Exhibit 15 which is the Yuba
3 County Water District power purchase agreement which
4 included the '59 agreement.

5 What Mr. Onken was referring to was the '59 agreement
6 which is Exhibit A. So that is point one.

7 Point two, in response to Mr. Lilly's response to my
8 objection, we have had absolutely no testimony regarding
9 moneys out of Exhibit 15 of Yuba County Water District to
10 the cost of operating and maintaining the South Fork
11 Project. That is not at issue in this hearing.

12 The only thing at issue is expanding the purpose of
13 use, M&I, for those six permits and expanding the place of
14 use to the service area boundaries of OWID and also
15 extending the time for beneficial use of water supplies of
16 11516 and 11518 to the same -- to December 1, 2004. That's
17 it.

18 So this is really getting way beyond the scope of where
19 we are going with this hearing. Now, it's -- I can see Mr.
20 Lilly's request for additional water supplies for Yuba
21 County Water District, but that is not the issue of this
22 hearing. That's an issue for subsequent hearings, in maybe
23 2010, when the power project bonds are paid off. And under
24 the '59 agreement Yuba County Water District and OWID share
25 in power project revenues. That is when their big coup de

1 grace comes in 2010, not in 2000, not on October 16, 2000.

2 H.O. BROWN: Thank you, Mr. Baber.

3 Mr. Lilly, where are you headed with this?

4 MR. LILLY: First of all, Mr. Baber is incorrect. The
5 hearing issues go beyond just the petitions. In particular,
6 issue No. 3 talks about whether or not the State Board
7 should address any matters concerning the relative rights of
8 the two districts. Frankly, I think we could have finished
9 it by now in the time that it has taken to discuss the
10 objections.

11 But where I'm headed on this is just establishing in
12 very general terms that there will be significant additional
13 revenues available to both these districts after 2010, which
14 could affect the development of additional facilities.

15 H.O. BROWN: Mr. Baber, last word.

16 MR. BABER: Mr. Lilly just said, that is where it is
17 headed, so I submit it, your Honor.

18 H.O. BROWN: I am going to overrule.

19 Go ahead.

20 MR. LILLY: Mr. Onken, have you had a chance to look at
21 C-7 while all that was going on? That is Paragraph C-7 of
22 the 1960 contract between OWID and PG&E.

23 MR. ONKEN: What page was it on?

24 MR. LILLY: It was on Pages 15 and 16 of YCWD-15.

25 MR. BABER: You want him to read C-7 to himself and you

1 want to ask him about it? Is that what you want?

2 MR. LILLY: Mr. Brown, I don't want to be rude to Mr.
3 Baber, but you instructed me numerous times not to answer
4 questions of opposing counsel, so I am going to let you
5 handle that one.

6 MR. BABER: I will withdraw it, your Honor.

7 H.O. BROWN: It's been said.

8 Thank you.

9 MR. ONKEN: Go ahead.

10 MR. LILLY: Mr. Onken, have you had a chance to read to
11 yourself Paragraph C-7?

12 MR. ONKEN: I didn't get to read it completely here,
13 but I am familiar with it.

14 MR. LILLY: My question was very simple. Under that
15 paragraph does PG&E pay OWID for OWID's operation and
16 maintenance cost associated with the South Fork Project?

17 MR. ONKEN: Yes.

18 MR. LILLY: That is basically just a reimbursement of
19 your out-of-pocket expenses for O&M on that project?

20 MR. ONKEN: Yes.

21 MR. LILLY: What is the approximate annual amount of
22 those O&M payments that PG&E makes to OWID?

23 MR. ONKEN: Approximately \$3,500,000 in an average
24 year.

25 MR. LILLY: Is that, in fact, the 3.5 million that is

1 referenced in your Exhibit D?

2 MR. ONKEN: Yes.

3 MR. LILLY: Are there any other significant sources of
4 revenue in that \$3.5 million budget that you referred to?

5 MR. ONKEN: No.

6 MR. LILLY: On average how many kilowatt hours of
7 electricity does the South Fork Project generate per year?

8 MR. ONKEN: About 600,000,000 kilowatt-hours a year.

9 MR. LILLY: Do you in your expertise as an operating
10 systems engineer have any estimate, and I understand it
11 would just be rough, as to what the present fair market
12 value is of that electricity?

13 MR. ONKEN: The fair market value is jumping all around
14 all this year. There are the extreme shortages. If you
15 asked me which month of this year, I might be able to tell
16 you.

17 MR. LILLY: Is it fair to say that what is just used as
18 kind of a minimum average price during the year? Is it fair
19 to say that the average price during this year has been at
20 least three cents per kilowatt-hour?

21 MR. BABER: Mr. Chairman, same objection. Where are we
22 going to go with all this money thing? Where is it going?

23 H.O. BROWN: Mr. Lilly, I have cut you some slack
24 before, but where are you headed with this?

25 MR. LILLY: This is my last question. And where I am

1 simply headed is to show that the value of power generated
2 by this project significantly exceeds the O&M costs for this
3 project.

4 MR. BABER: My question is why. What relevance does it
5 have.

6 H.O. BROWN: Good question.

7 MR. LILLY: The answer is -- we haven't even gotten to
8 our opening statement yet; so you don't know exactly what
9 our position is in this hearing. There is a provision in
10 the 1959 agreement between the two districts that provides
11 that after the bonds are paid off in 2010 that the two
12 districts, YCWD and OWID, each share half of that power
13 revenue from that project. So the point I am trying to get
14 to here is that while Yuba County Water District has been
15 very revenue short up through 2010, that situation is very
16 likely to change after that, and that could affect the
17 district's ability to construct additional conveyance
18 facilities and so forth and, therefore, to deal with the
19 supply of unmet water needs within the district.

20 H.O. BROWN: Okay. One more question on that?

21 MR. LILLY: Yes. The one I already asked.

22 Is it fair to say that the fair market value of
23 electricity from this project on average during this year
24 has been at least three cents per kilowatt-hour?

25 MR. ONKEN: Yes.

1 MR. LILLY: Now, let's go back to your Exhibit D.

2 MR. BABER: Exhibit B is the one you want. Exhibit D
3 is statement of qualifications. Are you on that?

4 MR. LILLY: Mr. Onken, I have a question regarding your
5 Exhibit D, which is your statement of qualifications.

6 Do you have that in front of you?

7 MR. ONKEN: Yes.

8 MR. LILLY: The first paragraph of text under your
9 experience, the last sentence says:

10 Successfully negotiated four water sales for
11 OWID and developed two improvement programs
12 with PG&E which netted OWID over \$4,000,000.

13 (Reading.)

14 Do you see that?

15 MR. ONKEN: Yes.

16 MR. LILLY: My question is, what were the two
17 improvement programs with PG&E which netted OWID over
18 \$4,000,000?

19 MR. BABER: Same objection, Mr. Chairman. Where are we
20 going?

21 H.O. BROWN: I already ruled on it. Answer the
22 question, if you know the answer.

23 MR. ONKEN: The \$4,000,000 includes four water sales
24 and two improvement projects One was a tailwater depression
25 system that was installed at Woodleaf Powerhouse. And the

1 second improvement program was a new turbine runner at
2 Forbestown Powerhouse.

3 MR. LILLY: Now I am going to shift over to water.
4 What is the normal carryover storage -- first of all, are
5 you familiar with the term "carryover storage"?

6 MR. ONKEN: Yes.

7 MR. LILLY: What does that term mean to you?

8 MR. ONKEN: It is the storage let at the minimum point
9 of the reservoir, usually which occurs in December of each
10 year.

11 MR. LILLY: What is the normal carryover storage, or
12 the average carryover storage in Little Grass Valley
13 Reservoir?

14 MR. ONKEN: Approximately 48,000 acre-feet.

15 MR. LILLY: Is there -- are there significant
16 variations from your year to year in that carryover storage
17 amount?

18 MR. ONKEN: It can be. If you take a look at the
19 30-year, it is about 48,000.

20 MR. LILLY: Can you just give us an idea of what the
21 variations is?

22 MR. ONKEN: It will range between 35,000 carryover and
23 about 55,000 thousand acre-feet carryover.

24 MR. LILLY: Shifting to Sly Creek Reservoir, what is
25 the average carryover storage in Sly Creek Reservoir?

1 MR. ONKEN: The average is about 15,000 acre-feet.

2 MR. LILLY: Again, what is the variation in that
3 storage, carryover storage from year to year?

4 MR. ONKEN: From 3,000 to 30,000.

5 MR. LILLY: You talked this morning about Exhibit 3 to
6 your testimony, which I believe staff has now denominated as
7 Exhibit E3. Can you get that in front of you?

8 MR. ONKEN: Yes.

9 MR. LILLY: And I think you had an overhead. Would you
10 just put that up on the overhead projector, please?

11 Thank you.

12 My question is, on the left-hand column it says
13 paragraph and down in the secondhand entry it says part II
14 and T and number 2.

15 Do you see that?

16 MR. ONKEN: Yes.

17 MR. LILLY: There is an entry for 4,500 acre-feet. The
18 next column under heading Surplus Available for PG&E
19 Generation Payments, the entry there says, "Yes, \$1.50 per
20 acre-foot."

21 Do you see that?

22 MR. ONKEN: Yes.

23 MR. LILLY: Could you just clarify what you mean by
24 that entry?

25 MR. ONKEN: It means that surplus water is available

1 for generation use and that is the question, yes. And
2 according to the Yuba County portion of the contract,
3 they're paid \$1.50 per acre-foot for water that passes
4 through Kelly Ridge Powerhouse.

5 MR. LILLY: So then is it correct, Mr. Onken, that
6 under the various agreements among Yuba County Water
7 District, OWID and PG&E that Yuba County Water District has
8 the right to request that that 4,500 acre-feet of water per
9 year be run through the Kelly Ridge Powerhouse and will
10 receive \$1.50 per acre-foot from PG&E for that water?

11 MR. ONKEN: If Yuba County does not use the water down
12 the Bangor Canal and the water has been available to run
13 through Kelly Ridge Powerhouse according to the terms of the
14 contract, they would be paid \$1.50 per acre-foot.

15 MR. LILLY: They have a right to request that that
16 water be routed through the Kelly Ridge under those terms?

17 MR. ONKEN: Yes.

18 MR. LILLY: After the water has gone through the Kelly
19 Ridge Powerhouse, I think you said, does that water then
20 flow into the Feather River?

21 MR. ONKEN: It discharges into the Feather River and it
22 becomes part of the State Water Project at that time.

23 MR. LILLY: It actually becomes part of the flows in
24 the Feather River; is that correct?

25 MR. ONKEN: Yes.

1 MR. LILLY: So we are clear on the odyssey, if the
2 discharge point of the Kelly Ridge Powerhouse is in the
3 Feather River immediately downstream of Oroville Dam?

4 MR. ONKEN: Yes.

5 MR. LILLY: Thank you, Mr. Onken.

6 I am going to shift over to you, Mr. Glaze. Good
7 morning.

8 MR. GLAZE: Good morning.

9 MR. BABER: Excuse me, Mr. Chairman. Will I have a
10 chance to redirect Mr. Onken after Mr. --

11 H.O. BROWN: Do the panel first, and then we will
12 redirect the whole panel.

13 MR. BABER: Okay.

14 MR. LILLY: Mr. Glaze, first of all, how many acre-feet
15 per year on average does OWID presently divert from the
16 South Fork Project each year for consumptive uses?

17 MR. GLAZE: About 27,000 acre-feet.

18 MR. LILLY: Of that 27,000 how many acre-feet per year
19 are used for domestic purposes?

20 MR. GLAZE: About 6,000.

21 MR. LILLY: If necessary, you can differ to Mr. Onken.
22 This was covered in both your testimonies.

23 Is that 6,000 acre-feet per year run through the water
24 treatment plant that the district operates on, I think you
25 said, the shores of Miners Ranch Reservoir?

1 MR. GLAZE: Most of it goes through there. Some of it
2 also goes through a small treatment plant in Bangor.

3 MR. LILLY: How does the water get to the Bangor
4 treatment plant?

5 MR. GLAZE: Down the Bangor Canal.

6 MR. LILLY: So it is run down the canal and then
7 treated?

8 MR. GLAZE: Yes.

9 MR. LILLY: And then it goes into a domestic water
10 system?

11 MR. GLAZE: Yes.

12 MR. LILLY: How many connections are there
13 approximately to OWID's domestic water systems?

14 MR. GLAZE: To date probably about 6,500.

15 MR. LILLY: About how many people are served by those
16 6,500 connections?

17 MR. GLAZE: I would guess about 17,000, 17,500. We
18 don't count people in households. It is a guess.

19 MR. LILLY: That is a fair approximation, isn't it,
20 based on your knowledge?

21 MR. GLAZE: Based on roughly two and a half people per
22 household.

23 MR. LILLY: If my arithmetic is correct, and please
24 correct me if I am wrong, if we had 27,000 acre-feet per
25 year total and 6,000 is being used for domestic purposes,

1 does that leave 21,000 acre-feet per year for irrigation
2 purposes?

3 MR. GLAZE: I think you've nailed it.

4 MR. LILLY: Of that 21,000 acre-feet per year how much
5 of that is lost due to conveyance losses in the various
6 district ditches?

7 MR. GLAZE: The Forbestown Ditch has the highest
8 conveyance loss, but cumulative probably in the 80-percent
9 range.

10 MR. LILLY: Is that 80 percent of the 21,000 is lost to
11 ditch losses?

12 MR. GLAZE: It means that it is unaccounted. We note
13 that that amount is diverted out of South Fork and when we
14 compare that to our records regarding consumption there is
15 roughly 80 percent unaccounted for amount.

16 MR. LILLY: So then the consumption would be
17 approximately 20 percent of 25,000?

18 MR. GLAZE: Yes.

19 MR. LILLY: So about 4,200 acre-feet per year; is that
20 correct?

21 MR. GLAZE: Well, I didn't do this. I am assuming you
22 did the math correctly.

23 MR. LILLY: I am not trying to pull a fast one.

24 MR. GLAZE: Confident in your arithmetic.

25 MR. LILLY: If we take 20 percent times 21,000, I think

1 we get 4,200; is that correct?

2 Does OWID meter its deliveries of irrigation water?

3 MR. GLAZE: Yes.

4 MR. LILLY: How does OWID do that?

5 MR. GLAZE: Three ways: with meters on -- in some
6 situations where service comes off of pipes and there is
7 sufficient pressure to make the meters work; and then by two
8 open ditch systems, one the miners inch; and then a flat
9 rate which is the hybrid of miners inch and smaller.

10 MR. LILLY: Meters and pipes I understand. I think
11 when you said open ditch miners inch. Does that mean there
12 is some kind of weir that measures the water?

13 MR. GLAZE: A miners inch is essentially a diversion
14 into a service. There is a plate in the diversion with a
15 one inch square cut out six inches below the surface of the
16 water.

17 MR. LILLY: And basically the water flows through that
18 one inch square?

19 MR. GLAZE: Yes.

20 MR. LILLY: What about flat rate, please describe how
21 that water is delivered to flat rate customers.

22 MR. GLAZE: It's essentially supposed to be one
23 acre-foot per month. That is about a three-quarter inch
24 opening as opposed to the one-inch square opening.

25 MR. LILLY: Is it really then in essence that metered

1 as well, or -- it sounds like it is basically the same type
2 of method as the miners inch method.

3 MR. GLAZE: Let's say it is certainly measured as
4 opposed to being metered. Metered has the connotation of a
5 meter which is going to give you a readout. Both the
6 miners inch and the smaller opening for flat rate accounts
7 are measuring water based upon an accepted standard for
8 delivery.

9 MR. LILLY: I appreciate the clarification. Now, this
10 morning Mr. Baber said that there was a change in your
11 testimony. Maybe we should get your testimony in front of
12 you so we make sure we have the exact reference. That is
13 Exhibit C. And I believe, and please correct me if I have
14 this wrong because Mr. Baber went over this rather quickly.
15 I believe on Page 1 in Paragraph 2.0, the last sentence
16 says:

17 OWID provides water service for agricultural
18 usage from its raw water system to an area of
19 approximately 2,000 acres within that 32,000
20 gross acres. (Reading.)

21 Do you see that?

22 MR. GLAZE: Yes.

23 MR. LILLY: I believe Mr. Baber said that there was a
24 correction to that 2,000 acre number; is that correct?

25 MR. GLAZE: Yes.

1 MR. LILLY: What is the new number?

2 MR. GLAZE: 6,200 acre.

3 MR. LILLY: Would you please explain, number one, how
4 did you calculate the 6,200 acre number?

5 MR. GLAZE: Our GIS system actually counted that. It
6 is by identifying the parcels that have irrigation accounts.
7 The GIS system will then give us an acreage.

8 MR. LILLY: Is that then the total acres within those
9 parcels or the net irrigated acres within each parcel?

10 MR. GLAZE: That would actually be the gross irrigated
11 acres. It is the total acreage of all parcels that receive
12 irrigation service.

13 MR. LILLY: So that would include roads and buildings,
14 and so forth, driveways?

15 MR. GLAZE: No. It would not include county or public
16 roads.

17 MR. LILLY: Excuse me, it would include private roads,
18 driveways and private buildings and so forth; is that
19 correct?

20 MR. GLAZE: It represents the total area of each parcel
21 served.

22 MR. LILLY: Would it include buildings and private
23 roads on those parcels?

24 MR. GLAZE: If they are on those parcels, yes.

25 MR. LILLY: Do some of these 6,200 gross acres also

1 receive water from other sources?

2 MR. GLAZE: Certainly possible. We don't do an
3 inventory to find out if they supplement with wells.

4 MR. LILLY: Are you aware of well use within your
5 district?

6 MR. GLAZE: Yes.

7 MR. LILLY: Some of the acreage could also be irrigated
8 with well water?

9 MR. GLAZE: My familiarization with well usage in our
10 district is primarily that wells are used for domestic
11 purposes and they almost always use irrigation water because
12 it is cheaper than pumping water.

13 MR. LILLY: You don't know for sure whether or not
14 there is any well water used for irrigation?

15 MR. GLAZE: I have no knowledge of well water used for
16 irrigation, only that it is used for domestic.

17 MR. LILLY: When did this change from 2,000 to 6,200
18 occur?

19 MR. GLAZE: I don't know that it was a change. I
20 merely noticed the inaccuracy of the error in the number.
21 If it is a typo, I am not sure. That 6,200 at least has
22 been a good approximation until we had GIS of the area that
23 we have irrigated, at least during the eight years I have
24 been with the district.

25 MR. LILLY: That would be since 1992?

1 MR. GLAZE: Yes.

2 MR. LILLY: I will shift over to you, Mr. Onken. Do
3 you remember testifying before this State Board in a water
4 right hearing, Bay-Delta hearings in 1992?

5 MR. ONKEN: Not Bay-Delta, but we had a water transfer
6 in 1992 and testified to the Board at that time.

7 MR. LILLY: Let me hand you an exhibit, and I don't
8 have copies of this yet but I can certainly make copies. I
9 didn't know this would be necessary because the 6,200 just
10 came in this morning.

11 This is an exhibit called WRINT-OWID-Exhibit 1. And it
12 says Testimony of Steven C. Onken. I am not going to ask
13 you to read the whole thing, but I have highlighted some
14 language at the top of Page 2. Why don't you just take a
15 look at that.

16 THE COURT REPORTER: Can I have the exhibit number,
17 please?

18 MR. LILLY: While Mr. Onken is looking at that, the
19 exhibit number is WRINT-OWID-Exhibit 1.

20 MR. BABER: Did you want him to look at Page 2 or just
21 the highlighted areas?

22 MR. LILLY: Excuse me, Mr. Brown, I really don't want
23 to be rude, but I don't want to cut you out of this dialogue
24 because I know you don't like that.

25 H.O. BROWN: Thank you, Mr Lilly.

1 Ask me the question.

2 MR. BABER: Mr. Brown, did Mr. Lilly request that Mr.
3 Onken look at the highlighted areas or the entire exhibit?

4 H.O. BROWN: What is your pleasure, Mr. Lilly?

5 MR. LILLY: My request to Mr. Onken was to just briefly
6 look over the exhibit just to familiarize himself, and
7 mainly to confirm it is, in fact, written testimony that he
8 previously prepared. And the only question I am going to
9 ask him is, I had a couple lines highlighted at the top of
10 Page 2.

11 MR. BABER: I was asking that, Mr. Chairman, because it
12 is 13 pages.

13 H.O. BROWN: Hold on.

14 Mr. Frink, do you have a copy of that? Do you want a
15 copy before we move forward?

16 MR. FRINK: It depends on how ostensibly we get into it.

17 H.O. BROWN: Take a look at it, Mr. Frink, and see what
18 it is.

19 MR. FRINK: Mr. Brown, I don't know if we need a copy
20 in the record or not. Perhaps you can reserve that
21 determination until after Mr. Onken has answered Mr. Lilly's
22 questions.

23 H.O. BROWN: All right.

24 Why don't you ask a question, Mr. Lilly, and, Mr.
25 Baber, if you have any objections or concerns you may raise

1 them before your client answers.

2 MR. BABER: Thank you, Mr. Chairman.

3 MR. LILLY: Thank you, Mr. Brown.

4 This won't take very long. I would ask your permission
5 if I can just look over Mr. Onken's shoulder so I can read
6 the sentence in just a minute.

7 First of all, Mr. Onken, is this, in fact, a copy of
8 written testimony that you previously submitted to the State
9 Water Resources Control Board?

10 MR. ONKEN: Yes.

11 H.O. BROWN: I counsel you, Mr. Onken, you have my
12 permission to check with your counselor before you answer
13 any question on this issue here.

14 MR. ONKEN: Thank you.

15 MR. LILLY: Mr. Onken, do you remember the year in
16 which you submitted this testimony?

17 MR. ONKEN: I believe it was 1992.

18 MR. LILLY: I just am going to ask you about this one
19 sentence at the top of Page 2. It says:

20 The district provides water service for
21 agricultural usage from its raw water system
22 to an area of approximately 2,000 acres.

23 (Reading.)

24 Do you see that?

25 MR. ONKEN: Yes.

1 MR. LILLY: Was that, in fact, an accurate statement of
2 your testimony in 1992?

3 MR. ONKEN: At the time that was the best information
4 that was provided to me.

5 MR. LILLY: And I am not going to submit this exhibit
6 unless Mr. Frink or anyone else from staff requests it. If
7 they do request it, I would be glad to make copies for all
8 parties. But it is, in fact, proper cross-examination to
9 impeach a witness from prior testimony.

10 H.O. BROWN: Your point is made, Mr. Lilly.

11 Mr. Frink, any comments?

12 MR. FRINK: We are not requesting it as a staff
13 exhibit. If either of the parties wants to do so to
14 complete the record if they feel that is a necessity, they
15 can identify it.

16 MR. BABER: No request.

17 H.O. BROWN: Proceed, Mr. Lilly.

18 MR. LILLY: We'll shift back to you, Mr. Glaze.

19 Going back to the deliveries of irrigation water, how
20 much does OWID charge its customers per acre-foot for
21 irrigation water?

22 MR. GLAZE: The various rates equal \$45 an acre-foot.

23 MR. LILLY: I am going to go forward to Paragraph 3.0
24 of your written testimony, which is Exhibit C.

25 Do you have that in front of you?

1 MR. GLAZE: Yes.

2 MR. LILLY: The first sentence in that paragraph says:

3 OWID South Fork Project commenced in the

4 early 1920's. (Reading.)

5 Do you see that?

6 MR. GLAZE: Yes.

7 MR. LILLY: What do you mean by the word "commenced"?

8 MR. GLAZE: Development of the permits necessary for

9 the project.

10 MR. LILLY: The actual construction did not take place

11 until much later; is that correct?

12 MR. GLAZE: Yes.

13 MR. LILLY: That would actually be, as you and Mr.

14 Onken discussed, in the early 1960s?

15 MR. GLAZE: Yes.

16 MR. LILLY: Going forward to Paragraph 5.0 of your

17 testimony, I am going to read the first sentence of that

18 paragraph. It says:

19 We request that the SWRCB reject the petition

20 of YCWD to include Yuba City within the YCWD

21 service area under permit 11518 until a

22 satisfactory amendment of the 1959 agreement

23 is negotiated. (Reading.)

24 Do you see that sentence?

25 MR. GLAZE: Yes.

1 MR. LILLY: What do you mean by the term "satisfactory"?

2 MR. GLAZE: The agreement stipulates that water can be
3 used by Yuba County Water District in Yuba County. Yuba
4 City is in Sutter County. There would need to be an
5 acceptable agreement, amendment to that agreement to include
6 Sutter County as a place that Yuba County Water District
7 could use its water.

8 MR. LILLY: So it is your position when you say
9 satisfactory or acceptable, you mean an agreement that has
10 to be approved by OWID?

11 MR. GLAZE: The Board of Directors of OWID has to
12 approve all agreements, yes.

13 MR. LILLY: When you say "satisfactory," you mean the
14 amendment would have to be approved by the Board of
15 Directors of OWID?

16 MR. BABER: Objection. Asked and answered.

17 H.O. BROWN: Answer it again.

18 MR. GLAZE: Yes, the Board of Directors of
19 Oroville-Wyandotte would have to approve any amendment to
20 that agreement.

21 MR. LILLY: Now if you can go forward to the very last
22 sentence of Paragraph 5.0, and I will read that.

23 YCWD should be developing and financing the
24 storage and facilities needed to service
25 customers without taking water already placed

1 to reasonable and beneficial use by OWID.

2 (Reading.)

3 Do you see that sentence?

4 MR. GLAZE: Yes.

5 MR. LILLY: What do you mean by "water already placed
6 to reasonable and beneficial use by OWID"?

7 MR. GLAZE: The agreement, 1959 that is, clarifies
8 exactly what water is available, where it is available, the
9 conditions by which it can be used. And the petition that
10 we see from Yuba County Water District obviously seeks to
11 have water made available to it beyond the scope of the
12 agreement.

13 And if that were to be allowed without appropriate
14 amendments to the agreement, then that would be water that
15 OWID would not be able to use for beneficial purposes,
16 possibly, depending on where it is delivered. Beneficial
17 uses being hydro purposes, environmental purposes, domestic,
18 irrigation.

19 MR. LILLY: I don't think that really answers my
20 question, Mr. Glaze. This sentence says water already
21 placed to reasonable and beneficial use by OWID. I think
22 that is referring to the past rather than the future.

23 What water are you referring to as water that has
24 already been placed to a reasonable and beneficial use by
25 OWID?

1 MR. GLAZE: It is my understanding that if Yuba County
2 Water District were to receive additional amounts of water
3 at the locations it desires to receive them, it would divert
4 water out of the South Fork of the Feather River at
5 elevations above locations that we are currently using that
6 water and make it unavailable for OWID to use for beneficial
7 purposes.

8 MR. LILLY: Well, water being delivered to Yuba City
9 actually would flow through all of the South Fork Project
10 hydrogeneration facilities; is that correct?

11 MR. GLAZE: That's correct. But as I read the
12 testimony of your various witnesses, there is discussion in
13 there, substantial discussion, about needing water at higher
14 elevations that goes well beyond the water that is currently
15 going to Yuba City.

16 MR. LILLY: I see. So this is not referring to the
17 Yuba City water; this is referring to other water?

18 MR. GLAZE: This is your entire petition.

19 MR. LILLY: Does the pending Yuba County Water District
20 petition refer to anything besides Yuba City?

21 MR. GLAZE: Your testimony relative to your petition
22 involves discussion of other water beyond just the water to
23 Yuba City.

24 MR. LILLY: I think you said the petition. Let me just
25 ask it one more time.

1 Does the petition, not the testimony, does the
2 petition of the Yuba County Water District refer to water
3 other than water that would be delivered to Yuba City?

4 MR. GLAZE: Without looking back at the petition, I
5 can't specifically say it does not.

6 MR. LILLY: We have to look at the petition to answer
7 that question?

8 MR. GLAZE: I would have to refresh my memory. I am
9 assuming by your question that you're confident that it does
10 not.

11 MR. LILLY: Don't make assumptions here. You are
12 supposed to testify to your own knowledge.

13 Now you're testimony refers to an Exhibit 1 which I
14 believe staff has now denominated as Exhibit C1; is that
15 correct?

16 MR. GLAZE: Yes.

17 MR. LILLY: I think this 1 is referenced in Paragraph
18 5.0 of testimony, your Exhibit C; is that correct?

19 MR. GLAZE: Yes.

20 MR. LILLY: I have a question regarding this Exhibit
21 C1. If you can refer to the page, there is a page with a
22 protest form and then the next page, which is a typewritten
23 page with a heading at the top says, "Protest to Petition to
24 Change Permit 11518, Application 14113."

25 Do you see that page?

1 MR. GLAZE: Yes.

2 MR. LILLY: I am going to look at numbered paragraph
3 one, the second sentence down says -- excuse me, the third
4 sentence down. It's about the sixth line down says:

5 For that reason the State Water Resources
6 Control Board, pursuant to its regulations,
7 may not grant a change in place of use until
8 such time as either the Oroville-Wyandotte
9 Irrigation District consents to this petition
10 or court orders the Oroville-Wyandotte
11 Irrigation District to consent to this
12 petition. (Reading.)

13 Do you see that sentence?

14 MR. GLAZE: Yes.

15 MR. LILLY: When you say the State Water Resources
16 Control Board pursuant to its regulations, what regulations
17 of the State Water Resources Control Board are you referring
18 to?

19 MR. BABER: Objection, Mr. Chairman. Counsel is asking
20 Mr. Glaze about Exhibit 1 to his testimony which is the
21 protest submitted on March 8, 1983, by counsel for OWID,
22 Paul Minasian, and I don't believe Mr. Glaze signed this
23 protest. I believe Mr. Minasian signed it. Yes, his
24 signature is on Page 5 of the protest.

25 H.O. BROWN: Mr. Glaze doesn't know, then?

1 MR. BABER: He knows it because he read it. But for
2 any questions as to what the intent was behind this
3 sentence, he can't testify as to what the intent was of the
4 sentence.

5 H.O. BROWN: If the witness doesn't know, then that is
6 a proper answer.

7 MR. GLAZE: I do not know what the regulations of the
8 State Water Resources Control Board say relative to this.

9 MR. LILLY: If I can just have a moment, I think I am
10 just about ready to wrap it up. I want to have a moment to
11 talk to my people.

12 H.O. BROWN: Off the record for a moment.

13 MR. LILLY: Off the record one or two minutes.

14 H.O. BROWN: Esther, we are off the record.

15 (Discussion held off the record.)

16 H.O. BROWN: Back on the record.

17 MR. LILLY: Mr. Brown, thank you for allowing me a
18 short pause. I don't have any questions of Mr. Glaze or Mr.
19 Onken. I appreciate both of their answers to questions this
20 morning.

21 H.O. BROWN: Thank you, Mr. Lilly.

22 Now would be a time for redirect if you have any.

23 MR. LILLY: Excuse me, Mr. Brown, normally --

24 H.O. BROWN: I beg your pardon, Mr. Gallery. Please
25 excuse me. Mr. Gallery, you're up.

1 I sometimes do that to see if Mr. Lilly is paying
2 attention.

3 MR. LILLY: I try my best.

4 ---oOo---

5 CROSS-EXAMINATION OF OROVILLE-WYANDOTTE IRRIGATION DISTRICT

6 BY YUBA CITY

7 BY MR. GALLERY

8 MR. GALLERY: I would like to begin, gentlemen, by
9 covering a couple of the provisions in Exhibit A to OWID's
10 exhibits. This is the 1959 agreement between the two
11 districts, and I will ask my questions. I think whichever
12 of you feel appropriate in answering will be free to answer
13 unless specified.

14 I wonder if I could use the overhead in doing this, Mr.
15 Chairman.

16 Mr. Glaze, this is Page 3 of the 1959 agreement between
17 the two districts which is your Exhibit A.

18 Do you recognize Paragraph 5A that is up on the
19 overhead?

20 MR. GLAZE: Yes, I do.

21 MR. GALLERY: Directing your attention to the
22 underlined language in Subparagraph A that states
23 that:

24 Oroville shall make available to Yuba at the
25 outlet from Miners Ranch Terminal Reservoir

1 the water specified in Paragraph 2 of
2 Paragraph C for sale by Yuba to PG&E or for
3 its own use. (Reading.)

4 Is that correct?

5 MR. GLAZE: That's correct.

6 MR. GALLERY: In your 1959 agreement with Yuba County
7 Water District it was clear that Yuba County Water District
8 could use the water itself or sell it to PG&E; is that
9 correct?

10 MR. GLAZE: Appears that way.

11 MR. GALLERY: That sale to PG&E would be by running the
12 water through the powerhouse at Kelly Ridge and dropping it
13 into the Feather River, correct?

14 MR. GLAZE: At the outlet from Miners Ranch Terminal
15 Reservoir. I don't see Kelly Ridge Powerhouse mentioned
16 there.

17 MR. GALLERY: If it were to sell it to PG&E, would
18 there be -- would that be the logical place for running the
19 water?

20 MR. GLAZE: That would be the logical place.

21 MR. GALLERY: And to your knowledge, how long has Yuba
22 County Water District been selling the water to PG&E through
23 Kelly Ridge Powerhouse?

24 MR. GLAZE: I honestly don't know when that began.

25 MR. GALLERY: This last overhead referred to Paragraph

1 -- referring to Page 2 it referred to C-2 and C-2, now on
2 the overhead, specifies that the amount of water that is
3 available to Yuba County Water District is the 4,500
4 acre-feet per annum to be diverted by Yuba on an irrigation
5 demand schedule at the outlet from Miners Ranch Terminal
6 Reservoir, correct?

7 MR. GLAZE: Correct.

8 MR. GALLERY: That is the 4,500 acre-feet that Yuba
9 County Water District has been selling to Yuba City, correct?

10 MR. GLAZE: Yes, it is.

11 MR. GALLERY: Finally, on Page 4 of your Exhibit A, I
12 am now in Section V and directing your attention to
13 Subparagraph F, and that provides that Yuba shall be -- Yuba
14 County Water District shall be entitled to negotiate with
15 PG&E for the sale of electrical energy generated by the use
16 of any excess water to which Yuba is entitled.

17 That language would pertain to the 4,500 acre-feet,
18 correct?

19 MR. GLAZE: Yes.

20 MR. GALLERY: The testimony indicated that -- I think
21 Mr. Onken's testimony indicated that the price for selling
22 of the water through Miners Ranch Reservoir is \$1.50 per
23 acre-feet paid by PG&E; is that correct?

24 MR. ONKEN: Yes.

25 MR. GALLERY: Does Oroville-Wyandotte sell surplus

1 water to PG&E at Kelly Ridge?

2 MR. ONKEN: Yes, we do.

3 MR. GALLERY: How much surplus water does OWID sell per
4 year to PG&E through Kelly Ridge?

5 MR. ONKEN: About 10,000 acre-feet.

6 MR. GALLERY: Do you know, Mr. Onken, how long Yuba
7 County Water District has been selling its 4,500 acre-feet
8 to PG&E through Kelly Ridge?

9 MR. ONKEN: I know it is about 1970. I don't know if
10 it was, you know, a year before or a year after. But it's
11 been going on for about 30-plus years.

12 MR. GALLERY: Is it fair to say that you know how long
13 Yuba County Water District has been selling the 4,500
14 acre-feet to Yuba County on downstream?

15 MR. ONKEN: The exact year?

16 MR. GALLERY: Or approximate, as best you can
17 approximate.

18 MR. ONKEN: They have been selling it for at least 30
19 years.

20 MR. GALLERY: Is it fair to say that OWID has been
21 aware for that period of time that the water has been sold
22 to Yuba City?

23 MR. ONKEN: Yes.

24 MR. GALLERY: The 4,500 acre-feet of water that Yuba
25 County Water District is entitled to at Miners Ranch under

1 the Exhibit A agreement, 1959 agreement between the two
2 districts, that entitlement runs on perpetuity; is that
3 correct? That is to say, it does not terminate in year 2010.

4 MR. ONKEN: There is some disagreement about that. It
5 depends upon the interpretation.

6 MR. GLAZE: What are you referring to?

7 MR. ONKEN: He asked if there was -- if it terminates
8 in the year 2010.

9 MR. GALLERY: Yes. Just to preface my question, in my
10 reading of the 1959 agreement between the two districts
11 indicates that it continues perpetually, and I just wondered
12 if you had any other interpretation.

13 MR. ONKEN: I am going to have to defer that to legal
14 counsel.

15 MR. GLAZE: What was the agreement you showed me
16 earlier?

17 MR. ONKEN: It's the --

18 MR. BABER: Mr. Chairman, OWID will stipulate that the
19 '59 agreement is -- there is no termination date.

20 MR. GLAZE: One moment, Mr. Gallery.

21 H.O. BROWN: Does that work for you, Mr. Gallery?

22 MR. GLAZE: I am sorry, Mr. Gallery, I was thinking of
23 the 3,700 acre-feet.

24 MR. GALLERY: Mr. Chairman, if Mr. Baber would
25 stipulate that the 4,500 acre-feet entitlement of Yuba

1 County Water District has no termination date, that would
2 clear it up for me.

3 MR. BABER: I won't stipulate to that. I will
4 stipulate that the '59 agreement has no termination date.
5 I think, Mr. Gallery, the 4,500 is a part of that. So I am
6 asking you if by stipulating that the '59 agreement has no
7 termination date, is that satisfactory for you?

8 H.O. BROWN: Okay.

9 MR. GALLERY: If that is the best I can do. And I just
10 was trying to clear it up for myself, so I will go on from
11 that.

12 H.O. BROWN: Again, direct your questions to the Chair.

13 MR. BABER: All right, Mr. Chairman.

14 MR. GALLERY: Mr. Onken, I will ask you the Yuba County
15 Water District exhibits include in Exhibit 21, which is a
16 Memorandum of Understanding between OWID and PG&E for the --
17 under which the Sly Creek Power Plant was added to the South
18 Fork Project; is that correct?

19 MR. ONKEN: Yes.

20 MR. GALLERY: And that agreement was entered into
21 before you were with OWID?

22 MR. ONKEN: The agreement, the Memorandum of
23 Understanding was entered into prior to my going to work for
24 OWID.

25 MR. GALLERY: Were you working with PG&E at that time?

1 MR. ONKEN: Yes.

2 MR. GALLERY: Did you have anything to do with the
3 negotiation of this?

4 MR. ONKEN: I was aware of it. I had nothing to do
5 with the negotiation.

6 MR. GALLERY: This exhibit, Yuba County Water District
7 21, has a part two attached to it which contains some
8 provisions entitled Water Purchase; is that correct?

9 MR. ONKEN: Yes.

10 MR. GALLERY: You are familiar with those provisions?

11 MR. ONKEN: Yes.

12 MR. GALLERY: Could you briefly tell us what the sum
13 and substance of that part two to that agreement does
14 consist of?

15 MR. ONKEN: Oroville-Wyandotte Irrigation District
16 under the original 1960 power purchase contract had a
17 certain amount of water allocated to it from various
18 locations in the power project. The Sly Creek contract or
19 Memorandum of Understanding reallocated those amounts of
20 water. And basically Oroville-Wyandotte reduced the amount
21 of water that would be delivered to it at the Miners Ranch
22 Canal and at the Forbestown Ditch, and in return received an
23 annual payment for that reduction in allocation.

24 MR. GALLERY: So under the original arrangement with
25 PG&E, Oroville-Wyandotte was entitled to certain quantities

1 for consumptive uses at a different location?

2 MR. ONKEN: Yes.

3 MR. GALLERY: This 1979 agreement reduced those
4 entitlements downwards; is that correct?

5 MR. ONKEN: Yes.

6 MR. GALLERY: I'm putting on the overhead an Exhibit A,
7 part two of that agreement, and it indicates in the
8 left-hand portion of the exhibit that it lists by month the
9 existing contract entitlements in the first column. Those
10 are -- which total 10,720 acre-feet. And that was the water
11 that OWID was to receive from the Forbestown Ditch under the
12 1959 agreement?

13 MR. ONKEN: Yes.

14 MR. GALLERY: This 1979 agreement reduced that
15 entitlement down from 10,720 to, am I correct, over in the
16 fifth column 3,720?

17 MR. ONKEN: Yes.

18 MR. GALLERY: So OWID then relinquished 7,000 acre-feet
19 of that entitlement under its contract with PG&E?

20 MR. ONKEN: Yes.

21 MR. GALLERY: Then over on the right half of the
22 exhibit am I correct that the 1959 agreement with PG&E in
23 that first column under Existing Contract had two
24 entitlement amounts totaling, at the bottom, 30,056 and
25 42,439?

1 Could you tell us what those two amounts represented?

2 MR. ONKEN: I don't remember the exact date, but I
3 believe it was about 1980. From 1960 to 1980 OWID was
4 entitled to 30,056 acre-feet per year. I believe in 1980
5 the entitlement went into what is called the second period
6 when OWID would be entitled to 42,439 acre-feet per year.

7 MR. GALLERY: Was that -- at least as of 1959 the plan
8 then was that OWID would be entitled to 42,439 for
9 consumptive uses at Miners Ranch Reservoir?

10 MR. ONKEN: Yes.

11 MR. GALLERY: By this 1979 amendment OWID agreed to
12 reduce that entitlement downward; is that correct?

13 MR. ONKEN: Yes.

14 MR. GALLERY: After the 1980 period your entitlement at
15 Miners Ranch would have been what?

16 MR. ONKEN: 29,439 acre-feet.

17 MR. GALLERY: By this amendment, am I correct, that in
18 the third column from the right you reduced your entitlement
19 at Miners Ranch 13,000?

20 MR. ONKEN: Yes.

21 MR. GALLERY: Then by adding these together, in 1979
22 you agreed to reduce your consumptive use entitlement out of
23 the project at least as far as the PG&E agreement is
24 concerned for a total of 20,000 acre-feet?

25 MR. ONKEN: Yes.

1 MR. GALLERY: Would it be fair to say that when OWID
2 agreed to reduce downwards its entitlements of 20,000
3 acre-feet in 1979 that it was aware that Yuba County Water
4 District was selling the 4,500 acre-feet to Yuba City?

5 MR. ONKEN: Yes.

6 MR. GALLERY: I want to next direct your attention to
7 Yuba County Water District Exhibit 22, which is a 1980
8 agreement between Yuba County Water District and OWID.

9 Which of you is most familiar with that agreement?

10 MR. GLAZE: Probably both familiar with it.

11 MR. GALLERY: Can you summarize in simple terms for us,
12 Mr. Glaze, what you understood the purpose and purport of
13 that agreement was?

14 MR. GLAZE: It acknowledges that Yuba County Water
15 District is selling 4,500 acre-feet of water to Yuba
16 City, and that OWID provides that water -- is willing to
17 provide that water in performance to this particular
18 document.

19 It goes on in Paragraph 2, apparently Yuba approached
20 OWID to provide water at a particular time to assist in that
21 sale, and I am not clear just from rereading this if that
22 was an additional amount beyond the 4,500. Nevertheless,
23 the agreement seems to be that OWID would sell to Yuba
24 County Water District in the '81, '82 and '83 amounts of
25 water shown on a schedule, labeled Schedule A, during the

1 calendar months also shown on that schedule solely and
2 exclusively for the purpose of that water going to the city
3 of Yuba City at a stipulated price, \$10 a acre-foot.
4 Delivery is measured at the outlet of Kelly Ridge
5 Powerhouse. OWID assumes no responsibility for getting that
6 water to Yuba City. Terms and conditions of payment.

7 Have I covered enough of it?

8 MR. GALLERY: Yes, I think you have. Thank you, Mr.
9 Glaze.

10 This agreement was entered into between OWID and Yuba
11 County Water District on November 25th, 1980. And are you
12 aware that just a week or so later Yuba County Water
13 District entered in a new contract with Yuba City for the
14 sale of the 4,500 acre-feet?

15 MR. GLAZE: I am not aware of that. Mr. Onken showed
16 me Exhibit YCWD-23 which apparently consummated that
17 agreement.

18 MR. GALLERY: Yes. The date of that agreement is just
19 a week later than your agreement here which is Yuba County
20 Water District 22; is that correct?

21 MR. GLAZE: This is dated December 1st, 1980. The
22 agreement you had me summarize is dated November 25th,
23 1980. So it sounds like a week.

24 MR. GALLERY: Paragraph 1 of the Yuba County Water
25 District 22 exhibit which you just summarized for us says

1 that Yuba proposes to enter into an agreement to provide
2 water in the amount of 4,500 acre-feet to the city of Yuba
3 City to the year 2010. And the next sentence, that water is
4 provided by OWID pursuant to Yuba -- pursuant to the terms
5 of the contract entered into between the parties. And that
6 provision of water was -- OWID was obligated to provide that
7 4,500 acre-feet to Yuba under your 1959 agreement, correct?

8 MR. GLAZE: Referring to the last sentence, that water
9 is provided by OWID to Yuba pursuant to the terms of the
10 contracts entered into between the parties. Seems like it
11 is past tense. It would seem it refers to the '59
12 agreement.

13 MR. GALLERY: And then this agreement, reading down,
14 OWID really was providing some add-on water to that 4,500
15 acre-feet; isn't that correct, agreeing to provide some
16 add-on water for a period of three years?

17 MR. GLAZE: As I read it, that is what it appears to
18 be.

19 MR. GALLERY: You testified on direct examination that
20 OWID has over the years accommodated Yuba County Water
21 District in the sale of this 4,500 acre-feet to Yuba City.
22 And were you perhaps referring to this agreement as one of
23 your accommodations?

24 MR. GLAZE: As one of them, yes.

25 MR. GALLERY: I wanted to next ask you about Yuba

1 City's own Exhibit No. 11, which is the November 9th, 1988
2 agreement between OWID and Yuba City.

3 Are you familiar with that agreement, Mr. Glaze?

4 MR. GLAZE: YCWD-11 is an order amending the Decision
5 No. 907?

6 MR. GALLERY: Yes, I must have misspoke. I meant
7 exhibit of the Yuba City No. 11.

8 MR. GLAZE: I am not familiar with this to be able to
9 summarize it for you.

10 MR. GALLERY: Are you aware that OWID did enter into an
11 agreement with the Yuba City in November 1998 to sell water
12 itself to Yuba City?

13 MR. GLAZE: I am aware that, in fact, participated
14 towards the end in the negotiations with Yuba City for this
15 agreement, yes.

16 MR. GALLERY: When did you come on Board with OWID?

17 MR. GLAZE: November 10th, 1992.

18 MR. GALLERY: In 1988 what were you doing?

19 MR. GLAZE: I was managing a public utility district in
20 the Oroville area.

21 MR. GALLERY: You participated in negotiations for this
22 agreement between OWID and Yuba City?

23 MR. GLAZE: What is the date on this? I know that --
24 no, I did not have -- with legal counsel, and I am going to
25 have to ask your help the name of the public works director

1 of Yuba City.

2 MR. GALLERY: Would it have been Keith Fine, possibly?

3 MR. GLAZE: Just come to 1992 and '93 as well.

4 UNIDENTIFIED VOICE: John Wright.

5 MR. GLAZE: John Wright, right. We had conversation
6 with John Wright about the implementation of this agreement.
7 I misspoke. I didn't participate in the formation of this
8 agreement. But there was further conversation about how
9 this agreement would be facilitated. There was discussion
10 about amending it, relative to quantities to be delivered.
11 So I participated in discussions about amending the
12 agreement.

13 MR. GALLERY: Mr. Onken, did you have any familiarity
14 with the 1988 agreement that we have been talking about,
15 Yuba City Exhibit 11?

16 MR. ONKEN: I was working for OWID at the time. I
17 participated in some of the meetings. I don't recall this
18 agreement in detail. I may have been present.

19 MR. GALLERY: Let me move on, then.

20 The 4,500 acre-foot that Yuba County Water District is
21 selling to Yuba City after it flows back into the Feather
22 River, would OWID have any ability to use that 4,500
23 acre-feet after it went through the Kelly Ridge Powerhouse
24 and went back into the Feather River if it were not diverted
25 downstream by Yuba City?

1 MR. GLAZE: No, not with our current infrastructure.

2 MR. GALLERY: I didn't find any indication in OWID's
3 evidence or exhibits that OWID needed the 4,500 acre-feet
4 itself that is being sold to Yuba City. Is this a fair
5 statement?

6 MR. GLAZE: That is a fair statement.

7 MR. GALLERY: I believe those are all my questions, Mr.
8 Brown.

9 H.O. BROWN: Thank you, Mr. Gallery.

10 Staff, do you have questions?

11 MR. FRINK: Yes, we do.

12 H.O. BROWN: Mr. Frink, go ahead.

13 ---oOo---

14 CROSS-EXAMINATION OF OROVILLE-WYANDOTTE IRRIGATION DISTRICT

15 BY STAFF

16 MR. FRINK: Mr. Onken, I believe you were just
17 discussing Yuba City Exhibit 11, the 1988 contract between
18 OWID and Yuba City, Yuba City Exhibit 11?

19 MR. ONKEN: Yes.

20 MR. FRINK: Did OWID ever deliver water to Yuba City
21 under that agreement?

22 MR. ONKEN: No.

23 MR. FRINK: Do you know the reason that no deliveries
24 of water occurred under the provisions of that agreement?

25 MR. ONKEN: It is based upon request. OWID entered

1 into it to supplement some of the water that Yuba County
2 Water District was providing. And I don't recall ever that
3 the request was made to supplement the water delivery.

4 MR. FRINK: This wasn't intended -- to your knowledge,
5 then, was the delivery of water under this 1988 agreement
6 intended only as a supplement to the delivery of water that
7 Yuba City was receiving from Yuba County Water District?

8 MR. ONKEN: Yes. Yuba City felt their demand would
9 increase over a period of time, and they were looking for
10 another source of water. And OWID was interested in trying
11 to provide that, those additional demands.

12 MR. FRINK: Is that agreement still in effect?

13 MR. ONKEN: No.

14 MR. FRINK: I may be the only one in the room who
15 doesn't have a good understanding of what the real issues
16 are here. Can you explain to me how OWID is injured by Yuba
17 County Water District's delivery of water on Yuba City?

18 MR. ONKEN: Mr. Glaze or myself?

19 MR. FRINK: Either of you. In general terms.

20 MR. GLAZE: Let me take a shot at that. Physical
21 injury, there is no physical injury. Our point is that
22 there is an agreement, the 1959 agreement, by which Decision
23 907 conditioned the relationship between the two districts,
24 and that agreement continues to be discounted or disregarded
25 relative to the sale of water to Yuba City. We do not

1 sustain physical injury.

2 MR. FRINK: In your opinion, does the delivery of water
3 by Yuba County Water District deprive Oroville-Wyandotte
4 Irrigation District of water that it would use for any other
5 purpose?

6 MR. GLAZE: We have always read the agreement that the
7 4,500 acre-feet of water was water that Yuba County Water
8 District was entitled to and had never incorporated that
9 amount of water in our usage projections or any planning
10 documents. We have never anticipated using that water.

11 MR. FRINK: You have indicated that you believe that
12 the 1959 agreement should be amended in order to authorize
13 Yuba County Water District to deliver water to Yuba City;
14 is that correct?

15 MR. GLAZE: Yes.

16 MR. FRINK: And what is the nature of those amendments
17 that you are interested in having agreed to?

18 MR. GLAZE: It would require sitting down and
19 negotiating and coming up with a mutually agreeable
20 amendment to both parties, which we think is doable, but to
21 date has not been accomplished.

22 MR. FRINK: Could you be more specific? What in
23 general terms is it that OWID wants to resolve its protest
24 to the change petitions submitted by Yuba County Water
25 District?

1 MR. GLAZE: If you go back to my testimony, refer to it
2 very briefly in Paragraph 5.0, we believe that because of
3 the need that Yuba County Water District has for water at
4 its higher elevations, that the proceeds from the sale of
5 water to Yuba City should have been and should continue to
6 be used for the purpose of developing storage that will
7 accommodate Yuba County Water District's needs so that their
8 district can grow.

9 MR. FRINK: OWID's protest to the Yuba County Water
10 District petition is based on OWID's desire that Yuba County
11 Water District increase its water storage facilities?

12 MR. GLAZE: It's based on OWID's desire that Yuba
13 County Water District live by the terms of the agreement
14 with consideration and planning for the future needs that
15 would serve both districts; that is after 2010 we will
16 continue to grow, both districts will, and there will be
17 need for storage to adequately meet the needs of their
18 district and so that there is an efficient use of that water
19 for both consumptive and hydro purposes. Both districts
20 will benefit from the South Fork Project and that is why the
21 '59 agreement is so extensive in laying out the relationship
22 between the two districts.

23 MR. FRINK: How would OWID benefit from -- I will
24 phrase that again.

25 How would OWID benefit from Yuba County Water District

1 constructing more storage facilities?

2 MR. GLAZE: I don't know that there would be a benefit
3 to OWID. There would be a benefit to Yuba County Water
4 District. They're demonstrating that they have a need for
5 more water to accommodate growth. And rather than
6 attempting to take it from the South Fork Project, contrary
7 to the agreement, there should have been and still needs to
8 be planning and funding for storage for those purposes.

9 MR. FRINK: So it is your concern that -- are you
10 concerned that the 4,500 acre-feet that Yuba County Water
11 District is delivering to Yuba City, that that quantity of
12 water is going to deprive OWID of water that it needs?

13 MR. GLAZE: No, I have already said that we are not
14 concerned about the 4,500 acre-feet as being water that will
15 shortchange us on any of our needs.

16 MR. FRINK: Your concern goes to the fact that you
17 don't think Yuba County Water District is doing everything
18 that it should be doing to plan for its future water
19 demands?

20 MR. GLAZE: As I said, we believe that the water being
21 delivered to Yuba City is contrary to the terms of the 1959
22 agreement.

23 MR. FRINK: I understand that. But you have also said
24 it doesn't hurt your district in any way; is that correct?

25 MR. GLAZE: The water is not water that we need for

1 consumptive purposes.

2 MR. FRINK: What I want to know is why you want Yuba
3 County Water District to develop additional water storage
4 and deliveries facilities.

5 MR. GLAZE: Because they have water available and if
6 they -- there are provisions of that agreement whereby if
7 they had expanded the Bangor Canal even additional water
8 would have been available. It seems that the water at that
9 lower elevation does not meet their needs. So by using the
10 water that is available to them at a lower elevation and
11 generating revenues with that instead of using it for
12 consumptive purposes, as the agreement anticipated, the
13 proceeds from those sales, that sale to Yuba City, should,
14 in fact, be used for doing the things that were anticipated
15 in the agreement such as expanding the Forbestown Ditch,
16 building diversion on Canyon Creek and possible reservoir at
17 New York Flat Road. Those were all anticipated and
18 directions that were given by this Board to Yuba County
19 Water District and a time frame set up to do those things.
20 We think that is still the appropriate thing to do under the
21 agreement.

22 MR. FRINK: How would that help or benefit
23 Oroville-Wyandotte Irrigation District?

24 MR. GLAZE: The direct benefit would be that water
25 would not be diverted from the South Fork project, but, in

1 fact, could be derived from other sources. Such as Canyon
2 Creek, to provide the water that Yuba County Water District
3 needs. Both projects -- both districts, excuse me, will
4 share in the revenues in the South Fork Project after 2010.
5 It seems to be illogical that Yuba County Water District
6 would want to deplete the opportunity of the South Fork
7 Project to be as profitable for them as it can be when there
8 has been opportunity to develop storage to meet their water
9 needs some other way.

10 MR. FRINK: So the concern OWID has is that Yuba County
11 Water District may not be able to meet future demands in
12 other areas other than Yuba City; is that correct?

13 MR. GLAZE: Within their own district at higher
14 elevations.

15 MR. FRINK: I believe that is all the questions I
16 have.

17 H.O. BROWN: Ms. Mrowka.

18 MS. MROWKA: Thank you.

19 I would like to get a little clarification on the New
20 York Flat Reservoir. I believe Mr. Onken says it has not
21 been built.

22 Are there any plans for construction of this facility?

23 MR. ONKEN: Not to my knowledge.

24 MS. MROWKA: When I total up the four senior water
25 rights of Oroville-Wyandotte Irrigation District, converting

1 everything to acre-feet, including direct diversion
2 quantities, I get in excess of 275,000 acre-feet. And yet I
3 heard testimony today that Oroville-Wyandotte's average use
4 is under 30,000 acre-feet.

5 My question is: Number one, could you use the full
6 amount of these four senior rights for your use within the
7 Oroville-Wyandotte service area?

8 MR. ONKEN: The 275,000?

9 MS. MROWKA: Yes.

10 MR. ONKEN: No.

11 MS. MROWKA: Number two, when I add in the additional
12 quantities, made available by Permits 11516 and 11518, the
13 total then is 810,000 acre-feet.

14 Does Oroville-Wyandotte anticipate using any of that
15 difference between the 275,000 acre-feet under its four
16 senior rights and 810,000 acre-feet under the six rights
17 combined?

18 MR. GLAZE: I think she is asking you.

19 MR. ONKEN: In an average year, the project yields
20 340,000 acre-feet. We have paper rights that greatly exceed
21 an average year. You asked if we will use that water? It
22 is unlikely.

23 MS. MROWKA: Thank you.

24 Is the primary purpose of maintaining Permits 11516 and
25 11518 to enable service to Yuba County Water District?

1 MR. ONKEN: Those were the jointly held permits --

2 MS. MROWKA: That is correct.

3 MR. ONKEN: -- for consumptive use.

4 MS. MROWKA: That is correct.

5 MR. ONKEN: It is my understanding that that was agreed

6 to and it was presented to the Board during the various

7 appeals and the various orders that were issued by the Water

8 Resources Control Board over the years. And these permits

9 are jointly held, like I said, as a result of the direction

10 that we received from the Water Rights Board.

11 MS. MROWKA: If I understand the earlier testimony you

12 just gave this morning regarding the totals that you used

13 and the fact that you simply don't use nearly the amount

14 that is in the four senior rights, may I assume that

15 Oroville-Wyandotte does not really utilize these junior

16 rights or senior rights for its own service area of use?

17 MR. ONKEN: At this time we utilize about 27,000

18 acre-feet. If I had to allocate it to a specific right, I

19 don't think I can do that. It's all six rights provide that

20 27,000 acre-feet for OWID's use.

21 MS. MROWKA: Is there anything special about the two

22 junior rights, such as having a separate source that is not

23 in your senior rights or something else special that creates

24 a need to maintain those rights to serve Oroville-Wyandotte

25 service area?

1 MR. ONKEN: Yes. It does describe the project as it
2 exists today. The senior rights that date back to 1922 and
3 '23 describe the project as it was envisioned. The actual
4 construction is different. And so the junior rights are as
5 the project exists today.

6 MS. MROWKA: If your change petitions are approved is
7 that statement still true?

8 MR. ONKEN: Yes. The senior rights do not describe the
9 South Fork Project, meaning the reservoirs and tunnels and
10 diversions as they exist today.

11 MS. MROWKA: Can you give me some clarification, what
12 is in the junior rights that is not in the senior rights?

13 MR. ONKEN: The powerhouses. I am sorry, not the
14 powerhouses, the diversion dams, the exact locations and
15 names of them, like Ponderosa Reservoir, Forbestown
16 Diversion Dam, and Slate Creek Diversion Dam. Those are not
17 envisioned in the senior rights that were developed in the
18 early '20s.

19 MS. MROWKA: There is -- currently Oroville-Wyandotte
20 and Yuba County Water District are copermittees on the
21 junior permit. Is there anything special regarding
22 copermittees, a special status of the 45, other than the
23 fact that there is reference to the agreement you signed?
24 Is there anything extra?

25 MR. ONKEN: To the best of my knowledge, no. It was

1 developed as a result of that 1959 agreement.

2 MS. MROWKA: What, to your knowledge, is the source of
3 Yuba County Water District access to project facilities?

4 MR. ONKEN: Those two copermits, that are jointly held
5 by OWID and Yuba County Water District, the 11516 and
6 11518.

7 MS. MROWKA: The permit itself or the agreement between
8 the districts?

9 MR. ONKEN: The agreement, the 1959 agreement,
10 established how this was all going to be put together. And
11 then the permits were then jointly applied for by the two
12 districts.

13 MS. MROWKA: Is there any access solely based on just
14 being copermittees? Is there any access to project
15 facilities that they could exercise absent the agreement?

16 MR. ONKEN: With the existing water rights that are
17 currently in use?

18 MS. MROWKA: That's right.

19 MR. ONKEN: The four senior rights are held by OWID.
20 The two junior rights are held by the two districts. That
21 would be the only access.

22 MS. MROWKA: Does Yuba County Water District have any
23 physical access to operate any project features?

24 MR. ONKEN: No. OWID operates all weirs and control
25 valves to release the water and measure the water.

1 MS. MROWKA: If Yuba County Water District were not
2 listed as a copermitttee but held its own water right, would
3 they then have any access to these features for purposes of
4 directing flows into their project element?

5 MR. BABER: I am going to have to object. I know staff
6 is asking the questions, but it is almost a legal
7 question. If you're asking for his understanding, that is
8 satisfactory.

9 MS. MROWKA: I will withdraw it.

10 H.O. BROWN: Question is withdrawn.

11 MS. MROWKA: Please explain for me how Yuba County
12 Water District obtains any physical access for purposes of
13 operating Miners Ranch Reservoir to ask for releases
14 downstream. Do they have any physical access?

15 MR. ONKEN: No physical access.

16 MS. MROWKA: So it is solely based on terms of the
17 agreement --

18 MR. ONKEN: Yes.

19 MS. MROWKA: -- that they are able to request the
20 releases down to Yuba City?

21 MR. ONKEN: Yes.

22 MS. MROWKA: I would like an explanation of what would
23 happen pursuant to this agreement if for any reason Permits
24 11516 and 11518 were reduced to the quantities of water
25 already put to beneficial use. What, in your

1 interpretation, would happen at that point?

2 MR. ONKEN: For OWID or for Yuba County Water District?

3 MS. MROWKA: Please answer for your district.

4 MR. ONKEN: For OWID it's based upon my understanding
5 it would limit growth for the future for OWID, if we are
6 limited to the specific amounts of water that are currently
7 being used.

8 MS. MROWKA: Do you believe it would have impacts on
9 Yuba County Water District?

10 MR. ONKEN: Right now Yuba County Water District is
11 entitled to the contractual terms of the water, and that
12 they use that water, 3,700,000 acre-feet at Forbestown Ditch
13 and 4,500 acre-feet at Miners Ranch Reservoir or Kelly Ridge
14 Powerhouse. It would be the same impact that they currently
15 have. There would be no change.

16 MS. MROWKA: And could you please explain for me just a
17 listing what water sources go into Forbestown Ditch?

18 MR. ONKEN: It would be Little Grass Valley.

19 MS. MROWKA: And the source?

20 MR. ONKEN: The South Fork of the Feather River, Sly
21 Creek and Lost Creek, which are tributaries to Sly Creek
22 Reservoir and also Slate Creek which is tributary to the
23 North Fork of the Yuba, but it is diverted over to Sly Creek
24 Reservoir. Those are the four principal sources of water to
25 Lost Creek Reservoir which is the reservoir supplying the

1 Forbestown Ditch.

2 MS. MROWKA: Is water physically released from any of
3 the Oroville-Wyandotte storage facilities for purpose of
4 serving Yuba County Water District?

5 MR. ONKEN: Yes. Water is released to the Forbestown
6 Ditch from Lost Creek Reservoir, which supplies the tunnel
7 to Woodleaf Powerhouse.

8 MS. MROWKA: Any other reservoirs that are used for
9 service to Yuba County Water District?

10 MR. ONKEN: The water is commingled at Sly Creek
11 Reservoir from all those four tributaries: South Fork and
12 the Feather, Lost Creek, Sly Creek and Slate Creek. All
13 four of them come together at Sly Creek Reservoir. Water is
14 commingled at that point. It goes through the Sly Creek
15 Powerhouse, discharges into Lost Creek Reservoir and at that
16 point the water is diverted to the Woodleaf Tunnel and
17 Penstock, and then the water is released at penstock to the
18 Forbestown Ditch.

19 So if the water is commingled, you cannot identify
20 which water is which at that point.

21 MS. MROWKA: Thank you.

22 What is your delivery rate at SF-14 delivery valve into
23 the ditch?

24 MR. ONKEN: During the summer months it is as high as
25 24 cubic feet per second. During the winter months it may

1 be as low as two or three cubic feet per second.

2 MS. MROWKA: The maximum delivery rate to Yuba County
3 Water District is?

4 MR. ONKEN: Twelve cubic feet per second per the 1959
5 agreement.

6 MS. MROWKA: How much loss are they expected to take
7 into the cubic feet per second between the SF-14 delivery
8 valve and the point of pick up to the district?

9 MR. ONKEN: It depends. We calculate the loss
10 periodically, and it ranges between 25 percent and 43
11 percent, depending upon on the conditions.

12 MS. MROWKA: So how much would they have to turn out at
13 the SF-14 delivery valve to get the full 12 cfs to Yuba
14 County Water District?

15 MR. ONKEN: The maximum at the SF-14 delivery valve is
16 12 cfs, and then the losses are deducted from that. And so
17 at the point of delivery to Yuba County they would receive
18 57 percent of 12 cfs.

19 MS. MROWKA: Did you review Yuba County Water District
20 Exhibit 5, Tables 5 and 6? It is a tabulation of past water
21 use by Yuba County Water District.

22 MR. ONKEN: I did review it before the hearing here,
23 yes.

24 MS. MROWKA: Did you note any mathematical errors in
25 those numbers?

1 MR. ONKEN: I remember checking some of the numbers,
2 and I felt that they were accurate.

3 MS. MROWKA: Thank you.

4 Does Yuba County Water District currently utilize any
5 portion of the Forbestown Ditch below the New York Flat
6 turnout for purposes of serving the district service area
7 boundaries?

8 MR. ONKEN: No.

9 MS. MROWKA: Does Oroville-Wyandotte have any plans for
10 any additional facilities at this time?

11 MR. ONKEN: Facilities anywhere in the district?

12 MS. MROWKA: Any of the facilities named under Permits
13 11516 or 11518, specified.

14 MR. ONKEN: No, not at this time.

15 MS. MROWKA: That is all I have.

16 H.O. BROWN: Mr. Stein.

17 MR. STEIN: I have no questions.

18 MR. FRINK: Mr. Brown, I do have a couple more. Will
19 be very brief.

20 H.O. BROWN: All right, Mr. Frink, proceed.

21 MR. FRINK: Mr. Onken, I believe you stated that about
22 80 percent of the 27,000 acre-feet of water that OWID
23 diverts for consumptive use is lost as a conveyance loss; is
24 that correct?

25 MR. GLAZE: Actually I made that statement.

1 MR. FRINK: Has OWID done anything to reduce the
2 conveyance losses?

3 MR. GLAZE: OWID works on an ongoing basis to reduce
4 those losses from just daily operational efforts that
5 identify where those losses are, because they are
6 recurring. Earthen ditches deteriorate over time and
7 incrementally, so it is a constant battle to keep water
8 flowing as effectively and efficiently as possible.

9 There have also been some capital projects where we
10 have sealed ditches with gunite, extensive sections, 4,000
11 feet at a time. We have actually identified some areas
12 where leakage is occurring more rapidly than other places,
13 where perhaps there is more rock in the soil and have
14 actually bridged those areas with pipe.

15 So we have a ongoing program of searching for and
16 identifying areas where there is excessive leakage and then
17 do work on those areas as warranted.

18 MR. FRINK: Has the district identified a target level
19 that it would like to conserve the reduction of conveyance
20 losses?

21 MR. GLAZE: Unfortunately, target levels relative to
22 conveyance losses also have economics attached to it. A
23 realistic target or desirable target would be to be able to
24 line the entire ditch. We have estimates that that would
25 cost us in the vicinity of 15- to \$20,000,000 range. So

1 with limited funding, that is not a target that we have
2 considered.

3 MR. FRINK: The answer is what?

4 MR. GLAZE: We do not have a planned target that we are
5 attempting to achieve. We are trying operate that ditch as
6 efficiently as possible.

7 MR. FRINK: This is a question for either one of you.

8 How much water is it anticipated that OWID will use for
9 consumptive use at its full level of development?

10 MR. GLAZE: We haven't identified that number.
11 Historically we have been experiencing growth at about 1
12 percent in the Oroville area. However, within even the past
13 year we have seen development occur. One developer has
14 acquired rights to service for 5 percent of what would
15 constitute 5 percent growth in one project. As we
16 anticipate what the city of Oroville and economic
17 development groups are doing, we are anticipating that that
18 growth will increase and increase much rapidly, especially
19 as the Highway 70 corridor is built.

20 But at this point in time, if we were to project that 1
21 percent historical growth, our system, our infrastructure,
22 as it would expand to meet that growth, would continue
23 growing beyond a date that I can in my mind envision. So it
24 would have to be some fairly substantial growth increases
25 that would bring us to a point where I can identify a

1 build-out. We have not done a study to peg that date on any
2 particular scenario.

3 MR. FRINK: That is all the questions I have.

4 ---oOo---

5 CROSS-EXAMINATION BY BOARD MEMBER

6 H.O. BROWN: I have just one question.

7 The State Water Board at one time had hopes of the two
8 districts getting together and resolving their differences,
9 bringing a solution to our Board. In your opinion, either
10 one of you, what is the single most difficult issue that you
11 were not able to overcome between yourself?

12 MR. GLAZE: As I recall, two years ago negotiations
13 somewhat came to a screeching halt, primarily because of the
14 request by Yuba County Water District for operational
15 controls of the South Fork Project, not the controls, but
16 operational decision making in the South Fork Project prior
17 to 2010 and an attempt to establish the changes in the '59
18 agreement relative to the operations of the South Fork
19 Project subsequent to 2010.

20 H.O. BROWN: All right.

21 Thank you.

22 Mr. Baber, keeping in mind that redirect is directed to
23 cross.

24 MR. BABER: I understand, Mr. Chairman. I will be
25 brief.

1 H.O. BROWN: Do you have some redirect?

2 MR. BABER: Yes.

3 H.O. BROWN: How much time do you have? We will take
4 it up after lunch.

5 MR. BABER: Let's say 15 minutes.

6 H.O. BROWN: And recross will be directed to the
7 redirect. We will take our lunch break and meet again at,
8 let's say, 1:30.

9 (Luncheon break taken.)

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AFTERNOON SESSION

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H.O. BROWN: Mr. Baber, redirect.

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REDIRECT EXAMINATION OF
OROVILLE-WYANDOTTE IRRIGATION DISTRICT
BY MR. BABER

MR. BABER: Yes, I am. This question is for Mr. Onken and Mr. Glaze. During Mr. Gallery's examination of both of you, do you recall him asking you if the 4,500 acre-feet had ever been denied or not supplied by OWID to Yuba County Water District vis-a-vis --

MR. GLAZE: Yes.

MR. BABER: In fact, has the 4,500 acre-feet contractually agreed to be supplied to Yuba County Water District in the 1959 agreement ever been not supplied for any reason by Oroville-Wyandotte Irrigation District?

MR. GLAZE: To my knowledge, there has never been a denial if requested. I can't testify as to whether or not there has been a request every year, but there's never been a denial that I am aware of.

MR. BABER: Mr. Onken?

MR. ONKEN: I've been with the District almost 20 years and during that time there has been no reduction or denial of flows.

1 MR. BABER: Mr. Onken, earlier in your testimony,
2 cross-examination by Mr. Lilly for Yuba County Water
3 District, and also in your direct, the end of your direct by
4 myself, you referred to the contracts and I asked you if
5 that meant the 1959 agreement between Oroville-Wyandotte and
6 Yuba County Water District.

7 Do you recall that?

8 MR. ONKEN: Yes.

9 MR. BABER: Do you recall pulling out the documents
10 which was Yuba County Water District Exhibit 15?

11 MR. ONKEN: Yes.

12 MR. BABER: Is that the same contract as your Exhibit A
13 to your testimony, to our testimony?

14 MR. ONKEN: No. Exhibit YCWD-15 is the power purchase
15 agreement between Oroville-Wyandotte Irrigation District and
16 Pacific Gas & Electric company.

17 Exhibit A of Oroville-Wyandotte Irrigation District is
18 the agreement between Oroville-Wyandotte Irrigation District
19 and Yuba County Water District dated December 9th, 1959.

20 MR. BABER: And Exhibit A to Oroville-Wyandotte
21 Irrigation District's testimony is the same exhibit or
22 agreement that was confirmed by Decision 907; is that
23 correct?

24 MR. ONKEN: Yes.

25 MR. BABER: Yuba County Water District 15, being the

1 power purchase agreement with PG&E, also mentions the
2 agreement in it?

3 MR. ONKEN: Yes, it does. The 1959 agreement, it
4 mentions it and refers to it.

5 MR. BABER: Is that what you were referring to when you
6 were testifying earlier about the agreement and the
7 references on your Exhibit 3?

8 MR. ONKEN: E3. I knew what I was talking about. I
9 just didn't convey it to everybody else. And Exhibit E3
10 was -- the confusion was on the paragraph numbers here, Part
11 II C-1, Part II C-2, Part II C-3 that refers to Page II of
12 the 1959 agreement, December 9th, 1959 agreement, between
13 OWID and YCWD. And that is the breakdown of the water
14 allocations to Yuba County Water District.

15 MR. BABER: And that is Exhibit A to Oroville-Wyandotte
16 Irrigation's testimony here today?

17 MR. ONKEN: Yes.

18 MR. BABER: I have a question for you, Mr. Glaze, as to
19 the -- maybe Mr. Glaze -- Strike that.

20 I have a joint question for Mr. Glaze and Mr. Onken.
21 As to the 4,500 acre-feet of water supplies to Yuba County
22 Water District -- Strike that.

23 You are both familiar with the fact that D 838 and D
24 907 were issued back in 1953 and 1959, were you not?

25 MR. GLAZE: Yes, I am.

1 MR. ONKEN: Yes.

2 MR. BABER: You're both familiar with the discussion of
3 the South Fork Project in both of those decisions, are you
4 not?

5 MR. GLAZE: Yes.

6 MR. ONKEN: Yes.

7 MR. BABER: You are both familiar, are you not, that
8 the Canyon Creek upstream storage facilities, including New
9 York Flat Reservoir, possible enlargement of Bangor Canal
10 and Forbestown Ditch were discussed in the D 907 and D 838,
11 including the '59 agreement, were you not?

12 MR. LILLY: Excuse me, I'm going to object.

13 H.O. BROWN: Mr. Lilly.

14 MR. LILLY: First of all, I think Counsel misspoke that
15 New York Flat Reservoir and Bangor Canal are not Canyon
16 Creek storage facilities, so he is misstating the prior
17 evidence to say that.

18 Second of all, I don't think this lengthy questioning
19 of these two water rights decisions is really relevant. We
20 can all go read them, and they say what they say. I am not
21 sure that we get anything additional by having these
22 witnesses testify at length as to what their understandings
23 of these decisions are.

24 H.O. BROWN: Thank you, Mr. Lilly.

25 Mr. Baber.

1 MR. BABER: Mr. Chairman, if those facilities had been
2 built as promised in the 1959 agreement, at least by 1964
3 when they were supposed to have been built or even later, we
4 wouldn't be in front of you now. Because also the '59
5 agreement would have been amended as requested numerous
6 times by OWID to sit down with these people and talk. Would
7 have saved extensive time.

8 The fact they weren't built is an indication that Yuba
9 County Water District doesn't have the necessary water
10 supplies and essentially is pursuing a water grab here when
11 we are just trying to expand the place of use of OWID, its
12 service area within its own boundaries in Butte County and
13 include municipal and industrial uses within those six
14 permits, for no other reason.

15 Now we are getting into this analysis of Yuba County
16 Water District that needs additional water supplies, now,
17 before the year 2010. That is what is happening here.

18 H.O. BROWN: Let's see, I was under the understanding
19 that the main concern was the hearing for the 1959
20 agreement, and I didn't hear anything about the, quote, as
21 you suggested, Mr. Baber, a water grab as being the number
22 one problem.

23 MR. BABER: That will come out, Mr. Chairman. I mean,
24 that is in the testimony of Yuba County Water District, the
25 need for additional water supplies. And if they haven't --

1 if they had built the facilities that they promised to build
2 in the '59 agreement, they would have the additional
3 supplies and conveyance facilities to serve water to their
4 district.

5 H.O. BROWN: Is that the issue as you see it?

6 MR. BABER: That is the underlying issue to this
7 hearing, because the issues seem very simple as presented in
8 the notice of hearings.

9 H.O. BROWN: All right. As long as they haven't
10 constructed those facilities, for whatever reason, and that
11 they are not constructed today, then what is the issue
12 today, then?

13 MR. BABER: The issue today is to sit down and amend
14 the 1959 agreement to allow for the expansion of the place
15 of use as requested in the notice of OWID and then also to
16 expand the place of use as requested in the petition for
17 Yuba County Water District, to allow them to continue to
18 serve Yuba City, which would mean including opening up,
19 going beyond Yuba County to Sutter County to serve Yuba
20 City.

21 H.O. BROWN: I understand. Let me rephrase the
22 question.

23 The issue that we are trying to get to here in part is
24 why this hasn't happened?

25 MR. BABER: Exactly. Let's -- we have the same

1 question.

2 H.O. BROWN: Mr. Lilly, there was an objection by you.

3 MR. LILLY: Mr. Brown, I heard a long, what appeared to
4 be, a legal argument, legal or policy argument. I don't
5 think it -- and incidentally, just so we are clear, we
6 disagree that what we are doing is a water grab and we
7 disagree that the agreement required us to build these
8 projects. It just does not say that.

9 I'll save my legal arguments for closing briefs, and I
10 think Mr. Baber should do that as well. The question at
11 hand is what is the relevance of the questions that are
12 being directed to these witnesses. And if all it is is
13 having them say their understandings of these two water
14 rights decisions from the 1950s, some of that is a
15 appropriate background. But I think we have gone way beyond
16 that. Neither of them was around when these decisions were
17 made or the hearings that lead up to them were conducted.

18 I don't mean that they weren't alive, but they weren't
19 involved in the process. It is really not relevant to what
20 they now think those decisions made from their read. We can
21 all read them. Of course, the Board will make its
22 determination of those water rights decisions.

23 MR. BROWN: Thank you, Mr. Lilly.

24 We have an objection on the floor, Mr. Baber. Do you
25 have a response?

1 MR. BABER: No response.

2 H.O. BROWN: Mr. Lilly has a good point, Mr. Baber. I
3 am going to allow you to proceed, but I am going to ask you
4 to try to tighten it up a little bit in that direction.

5 MR. BABER: All right, Mr. Chairman, thank you.

6 Mr. Chairman, we rest. No further redirect.

7 H.O. BROWN: Thank you, Mr. Baber.

8 Mr. Lilly. Recross.

9 MR. LILLY: Yes.

10 ----oOo----

11 RE CROSS-EXAMINATION OF
12 OROVILLE-WYANDOTTE IRRIGATION DISTRICT
13 BY YUBA COUNTY WATER DISTRICT
14 BY MR. LILLY

15 MR. LILLY: Mr. Onken, I have a follow-up question from
16 those that I believe Ms. Mrowka asked you right before
17 lunch. One of her questions was, is water released from
18 project storage facilities to help supply the water to Yuba
19 County Water District.

20 Do you remember that question or line of questioning?

21 MR. ONKEN: Yes.

22 MR. LILLY: I believe at that time you said in response
23 that, yes, water was released from the Sly Creek Reservoir
24 which then flows down to Lost Creek Reservoir and some of
25 that goes on into the Forbestown Ditch; is that correct?

1 MR. ONKEN: Yes.

2 MR. LILLY: I just want to go back upstream and clarify
3 under certain project operations some stored water is also
4 released from Little Grass Valley Reservoir where it then
5 will flow down into Sly Creek and then on down into the
6 Forbestown Ditch for delivery to YCWD?

7 MR. ONKEN: That is correct.

8 MR. LILLY: I don't have any further questions on
9 recross.

10 Thank you, Mr. Brown.

11 Thank you, Mr. Onken.

12 H.O. BROWN: Mr. Gallery.

13 MR. GALLERY: I have none, Mr. Chairman.

14 H.O. BROWN: Mr. Frink.

15 MR. FRINK: I have no questions. I don't believe other
16 staff does either.

17 H.O. BROWN: Would you like to offer your exhibits into
18 evidence now, then, Mr. Baber?

19 MR. BABER: Thank you, Mr. Chairman.

20 MS. MROWKA: Point of clarification, on both Exhibits C
21 and E you didn't mention the primary exhibit, which was C
22 and D, you mentioned the sub exhibits, E1, 2 and 3.

23 H.O. BROWN: Do it again, Mr. Baber, and go slow for
24 me.

25 MR. BABER: Exhibits A, B, C and C1, D, E, E1, E2 --

1 H.O. BROWN: E1?

2 MR. BABER: Yes.

3 E3 and Exhibit F.

4 H.O. BROWN: All right.

5 Mr. Baber has offered into evidence Exhibits A, B, C,
6 C1, D, E, E1, E2, E3 and F.

7 Are there any objections to the admission of those
8 exhibits into evidence?

9 Mr. Lilly.

10 MR. LILLY: Mr. Brown, I have some minor objections or
11 request for clarification. In Exhibit A there are various
12 underlines which appear to be handwritten in on the printed
13 document. And I just wanted some clarification that what is
14 being offered is the printed document, not the underlines.
15 I don't think the underlinings were part of the 1959
16 contract.

17 H.O. BROWN: Ms. Mrowka, what is --

18 MR. FRINK: I believe that Mr. Lilly is correct. It is
19 the typewritten text.

20 MR. LILLY: In that regard, on Page 4 there is actually
21 some cross-outs and some numbers written in in hand down in
22 the lower left-hand corner of that page. Those numbers may
23 reflect some changes that were made in the 1965 amendment,
24 which
25 we are, in fact, offering as well. As far as the 1959

1 agreement itself, I just would request clarification that
2 those interlineations should not be considered to be part of
3 the 1959 agreement.

4 H.O. BROWN: Ms. Mrowka.

5 MS. MROWKA I would like Mr. Baber to address that.

6 H.O. BROWN: Mr. Baber.

7 MR. BABER: Mr. Chairman, I've got no problem with just
8 the printing word as opposed to the handwritten
9 interlineations or demarcations. We can clear some of that
10 up on maybe cross of Mr. Lilly's witnesses.

11 H.O. BROWN: Is that all right with you, Mr. Lilly?

12 MR. LILLY: I accept Mr. Baber's request that the
13 printing word come in. I don't think it is appropriate to
14 ask my witnesses to clarify on cross-examination what his
15 witnesses submitted into evidence. We will get to that in
16 time.

17 H.O. BROWN: You can discuss that later.

18 MR. LILLY: The other objections I have --

19 Are we done with Exhibit A?

20 H.O. BROWN: That sounds like Exhibit A is going to
21 make it.

22 MR. LILLY: Exhibit A will come in with the printed
23 words only?

24 H.O. BROWN: Printed words only.

25 MR. LILLY: Thank you, Mr. Brown.

1 Next I have Exhibit C1 is attached to Mr. Glaze's
2 testimony. This is OWID's protest to Yuba County Water
3 District's change of petition. That protest, obviously, is
4 already in the State Board files, and, therefore, it is part
5 of the records.

6 I just would like clarification that that is being
7 received into evidence as basically OWID's protest and the
8 associated legal arguments rather than as testimony. My
9 problem is Mr. Glaze's printed testimony says is attached
10 hereto and made part hereof.

11 So I just want clarification that that is not actually
12 testimony, and it is just OWID's legal position in this
13 proceeding?

14 H.O. BROWN: Mr. Frink.

15 MR. FRINK: I believe that would be the way that it was
16 intended. He attached this as a protestant that sets forth
17 the grounds on which the OWID protest had been changed. I
18 don't believe that it is being offered for the truth of the
19 matter asserted in the protest.

20 Is that correct, Mr. Baber?

21 MR. BABER: No, it is not, Mr. Frink. It is offered
22 for the truth of the matter. That is why it was attached as
23 Exhibit 1 to Mr. Glaze's testimony. It's actually
24 paraphrased in the last three sentences of Paragraph 5.
25 Quote:

1 OWID would accept the application of YCWD
2 with an agreed upon amendment of the '59
3 agreement, including a commitment by YCWD to
4 devote the proceeds of any sale of water
5 within Sutter County and outside of Yuba
6 County for the expressed purposes of
7 constructing storage in Canyon Creek or any
8 other upstream storage facility, any
9 conveyance facilities pursuant to and as
10 directed and intended by the provisions of
11 Part II, Paragraph C-1, Part 5, Paragraph E
12 of the '59 agreement with the OWID and YCWD.
13 YCWD should be developing and financing the
14 storage and facilities needed to serve its
15 customers without taking water already placed
16 to reasonable and beneficial use by OWID.

17 (Reading.)

18 MR. FRINK: My understanding is that there isn't an
19 objection to the statement that Mr. Baber just read because
20 that is within the testimony of Mr. Glaze himself. But
21 there were some, I believe, statements that could be
22 construed as legal arguments on interpretations of Yuba
23 County Water District's position that are stated in the
24 protest itself.

25 MR. LILLY: I think you misspoke. OWID's position, not

1 Yuba County Water District's position.

2 MR. FRINK: No. Actually, the protest itself has some
3 information about what Yuba County Water District is trying
4 to do, and so forth.

5 MR. LILLY: Okay.

6 MR. FRINK: I don't believe Mr. Glaze is in a position
7 to testify what Yuba County Water District was trying to do
8 as is alleged in the OWID protest. So --

9 MR. BABER: We accept that.

10 MR. FRINK: To the extent that you summarized the
11 information in the protest in Mr. Glaze's written testimony,
12 that information is accepted.

13 MR. BABER: Yes.

14 MR. FRINK: As factual testimony.

15 MR. BABER: Yes.

16 MR. FRINK: Beyond that, the protest is included to set
17 forth the grounds on which OWID protested the Yuba County
18 Water petition; is that correct?

19 MR. BABER: And the protest itself would not be offered
20 for the truth of the matter stated.

21 MR. FRINK: Yes.

22 MR. BABER: We accept that.

23 H.O. BROWN: All right, Mr. Lilly.

24 MR. LILLY: Thank you. I appreciate Mr. Frink's
25 clarifications.

1 Next, and I am almost done, Exhibit E3 is a table that
2 Mr. Onken apparently prepared or in any event testified to,
3 and I don't have a problem with this being offered for the
4 purpose of illustrating Mr. Onken's interpretations of the
5 1959 agreement, but I would like clarification and ruling
6 that to the extent that the 1959 agreement has language or
7 provisions that are in this agreement or there is some
8 discrepancy between the '59 agreement and this table, that
9 obviously the 1959 agreement controls and this does not
10 actually set forth the legal positions that are in the
11 agreement.

12 With that qualification I don't object to it coming
13 into evidence.

14 H.O. BROWN: You agree to that, Mr. Baber?

15 MR. BABER: I have no problem with it. I don't know
16 why we need that clarification because he had opportunity to
17 cross-examine Mr. Onken on that, but I accept that.

18 MR. LILLY: Finally, this is a minor point, but Exhibit
19 F is just a proof of service. Normally we don't accept
20 those into evidence for hearings, but I will leave it to the
21 Board to decide whether or not they want this proof of
22 service to be formally admitted into the record for the
23 hearing.

24 MR. BABER: The only reason -- I assume you want to
25 know what my response is, and I think I just gathered it

1 from the notice of hearing as what you -- how you wanted it
2 presented.

3 H.O. BROWN: That's all right; we will accept it, Mr.
4 Baber.

5 MR. BABER: All right.

6 H.O. BROWN: With those changes or clarifications I
7 will accept into evidence Exhibits A, B, C, C1, D, E, E1, 2,
8 3, and F.

9 MR. BABER: Thank you, Mr. Chairman.

10 H.O. BROWN: Thank you, Mr. Baber.

11 And thank you, gentlemen.

12 We will go into direct now with Yuba County Water
13 Agency.

14 MR. LILLY: This is Yuba County Water District. It is
15 a whole different legal entity than what you just described.
16 It's been involved in prior hearings here.

17 H.O. BROWN: You probably know why Yuba County Water
18 Agency is on my mind, Mr. Lilly.

19 MR. LILLY: We have spent some time in this room
20 involving that agency.

21 H.O. BROWN: Thank you for the correction and for
22 clarification, Mr. Lilly.

23 MR. LILLY: Mr. Brown, I request that we take a short
24 break. We would like to just shift tables here so that we
25 can use the overhead projectors and easels and be looking at

1 Board Members while we are having people testify. If we can
2 take a short break and change tables, we'd appreciate it.

3 H.O. BROWN: We will go off the record for a few
4 minutes.

5 (Break taken.)

6 H.O. BROWN: Back on the record.

7 MR. LILLY: First of all, Mr. Brown, before I give my
8 opening statement I do have one housekeeping matter. We
9 have a new exhibit which I have labeled as Exhibit YCWD-4A,
10 and this is the same map that already was submitted as -- I
11 believe it is Figure 1 in Exhibit YCWD-4, with three minor
12 changes. First of all, Mr. Grinnell would testify to these.

13 The prior exhibit cut off the Feather River, and since
14 the Feather River is involved in this hearing, we edited the
15 map so it has the Feather River down to Yuba City on it.

16 Second change, we added the Slate Creek Tunnel which
17 was inadvertently left off the prior figure.

18 And third change was we inserted New York Creek because
19 of the discussion about New York Flat. So I will distribute
20 six copies of this to the Board and Board staff. I have
21 already given a copy to Mr. Baber before lunch, and we can
22 talk about it during the testimony.

23 H.O. BROWN: All right.

24 MR. LILLY: With that I am prepared to give a short
25 opening statement here.

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YUBA COUNTY WATER DISTRICT

MR. LILLY: First of all, I would like to say we appreciate the Board's taking the time to hold this hearing. We know the that Board has a very full hearing schedule and has been involved in numerous hearings this year, including as I understand one last week that I was not involved in.

But Yuba County Water District filed its petition 18 years ago. There has been numerous discussions among Board staff, OWID staff and Yuba County Water District staff and obviously those did not resolve the matter. We are glad now after this time to finally have the hearing and look forward to a decision as well.

As has been discussed earlier today, there are three groups of petitions pending before the Board during this hearing, and those are Yuba County Water District's petition to add Yuba City to the authorized place of use in Permit 11518 and to add Yuba City's Feather River diversion facilities to the authorized points of diversion and rediversion.

The second set of petitions are the extensions of -- petitions for the extension of time of the two joint permits, 11516 and 11518.

And finally, the third petition or petitions are OWID's petitions for the changes in purpose of use and places of

1 use. At the end of the hearing, during this proceeding, we
2 will ask the Board to grant the Yuba County Water District
3 petition to add Yuba City to the place of use. The key
4 issue under the law is whether or not there will be any
5 injury to Oroville-Wyandotte Irrigation District if the
6 petition is granted, and we believe that the evidence will
7 show that the South Fork Project has ample water to supply
8 all of OWID's present and projected future demands and also
9 to supply the water that Yuba County Water District is
10 entitled to receive, including the 4,500 acre-feet which is
11 designated at Miners Ranch Reservoir, but which Yuba is
12 allowed under the contract to instead run through the Kelly
13 Ridge Powerhouse into the Feather River.

14 The evidence will show that Yuba County Water District
15 cannot use this water directly at its own service area and,
16 therefore, that it is appropriate and that Yuba County Water
17 District would like to continue to supply this water to Yuba
18 City at least through 2010. After 2010 it may want to
19 continue depending on various events that unfold in
20 different forms, including particularly the Federal Energy
21 Regulatory Commission's relicensing of the South Fork
22 Project.

23 Because OWID will not be injured by this change we will
24 request that the petition be granted. There has been a
25 considerable discussion about the 1959 agreement and, of

1 course, we will have legal arguments regarding that
2 agreement in our closing brief. But the bottom line is that
3 agreement does not prohibit this change. The agreement and
4 Paragraph 2 -- Part II of that agreement starts out with
5 consent is given for certain types of changes or the parties
6 agree that certain types of changes will not be objected
7 to. But it does not say that only those changes are
8 authorized. It simply is silent as to the question of
9 changing the 4,500 acre-feet and place of use down to Yuba
10 City. And since the agreement is silent, we believe that
11 the Board's appropriate legal standard under the Water Code
12 is to look whether or not there will be any injury to OWID.

13 Regarding the petition for extension of time, there was
14 some very productive discussion this morning on that. If
15 necessary, we will follow up on that this afternoon as
16 well. It is pretty clear that, first of all, we are only
17 talking about petitions for extension of time under the
18 joint permit. Oroville-Wyandotte has four of its own
19 separate water right permits which, as was clarified this
20 morning by Mr. Onken, more than sufficient to supply all of
21 OWID's present and foreseeable future water uses,
22 consumptive uses under those separate permits.

23 So, we really have a very significant dichotomy on the
24 joint permits between the two districts. Basically, OWID
25 does not need them and YCWD does need them. So, the Board

1 will have to decide what's the best way is to go forward
2 with that. But it appears to us the best way is to grant a
3 reasonable extension of time for YCWD to perfect its water
4 use under those permits. But at this point OWID has not
5 demonstrated there is any reason for it to be allowed to
6 continue any rights under those permits. It simply does not
7 have any foreseeable need for those permits in the future.
8 We will address that in more detail in our closing brief.

9 The most important thing here is that the Yuba County
10 Water District has been subject to the constraints of the
11 1959 agreement, as far as the amounts of water that it can
12 receive. The evidence will show, I think basically
13 undisputed, that Yuba County Water District has present
14 demands for significantly more water than the 3,700
15 acre-feet occasional surpluses that it can receive under the
16 agreement and will also show that although the Yuba County
17 Water District has tried to develop other projects, such as
18 New York Flat and Canyon Creek, it has been unable to. And
19 under these we think this needs to be recognized rather than
20 simply placing a limit right now at the contractual amount.

21 Basically, that there is a couple of fundamental facts
22 that, I think, are important, and these are also brought out
23 by some of the other hearing issues. First, the South Fork
24 Project can produce significant amounts of water for
25 consumptive use over OWID's projected future demands. This

1 is a project with a water surplus, even when there is
2 significant hydropower generation.

3 Secondly, Yuba County Water District, as I mentioned,
4 has serious deficiency in its water supplies, and the most
5 feasible source and possibly the only future source for
6 water for deficiencies is the South Fork Project.

7 Now just to clarify, we are not asking the State Board
8 to amend the 1959 agreement during this hearing. I will say
9 that again because I know there has been argument to the
10 contrary. We are not asking the State Water Board to amend
11 the 1959 agreement during this hearing. What we are asking
12 the State Board to do is to recognize that circumstances
13 have changed dramatically since 1959. In particular, the
14 assumptions regarding Yuba County Water District's ability
15 to develop new projects like the New York Flat Reservoir and
16 Canyon Creek diversion have changed dramatically. I don't
17 need to tell this Board and staff, but it is not as easy to
18 develop new water projects today as it was in 1916 with the
19 various federal and state environmental laws that have been
20 passed, and, frankly, the additional water rights that
21 numerous parties have obtained in the meantime.

22 So, we are asking the Board to recognize that
23 circumstances of change. And we are also asking the State
24 Board recognize that allocations of water from the South
25 Fork Project may change in the future. In particular, after

1 the project bonds are paid off and the existing FERC license
2 expires in 2010, there, obviously, will be a new relicensing
3 procedure, and the Federal Energy Regulatory Commission may
4 very well decide that there needs to be an additional
5 allocation to Yuba County Water District, particularly in
6 consideration of the environmental impacts that will be
7 caused if Yuba had to develop its own project in lieu of
8 using the project. The Commission will clearly have that
9 discretion under the Federal Power Act to consider all
10 competing uses, including additional municipal uses in
11 Yuba.

12 So what we are asking this Board to do is to recognize
13 that and basically leave that option open, to leave the
14 water rights open. I think Ms. Mrowka in her questioning
15 got it clear; there is a big difference between a right of
16 access and a water right. We are asking the State Board to
17 leave open the water right to the extent of Yuba County
18 Water District's potential future demands that Mr. Grinnell
19 has estimated at 23,700 acre-feet. That does not mean that
20 we are asking for an order that Yuba can start taking that
21 water from the project tomorrow. The right of access issue
22 is separate from the water right issue. It will be
23 addressed through the contract, potentially through
24 renegotiations if the parties are ever able to agree to
25 that and potentially through the Federal Energy Regulatory

1 Commission relicensing, in effect a new FERC license may
2 change the current rights of access.

3 We think it is very important that that be recognized
4 and there not -- a cap not be placed on Yuba's water rights
5 at the amount of the current contracts or the current
6 usage.

7 Finally, and I will say that we will get into this in
8 more detail in our closing brief, obviously Yuba County
9 Water District will need some reasonable time after 2010, so
10 the petition of extension of time for Yuba's water should
11 extend for some reasonable time after 2010.

12 Finally, regarding OWID's change petition for changes
13 in purpose of use and place of use, as we said in our
14 protest, we do not object to those so long as the Board also
15 recognizes Yuba County Water District's reasonable present
16 and future rights in the process.

17 Unless there are any questions, I'll go forward and
18 call our first witness.

19 DIRECT EXAMINATION OF YUBA COUNTY WATER DISTRICT

20 BY MR. LILLY

21 MR. LILLY: Mr. Parker, you will be our first witness
22 today. Could you please state your name and spell your last
23 name, and I think you're going to get the microphone in just
24 a minute.

25 MR. PARKER: Yes. My name is Dennis Parker,

1 P-a-r-k-e-r.

2 MR. LILLY: Have you taken the oath for this hearing
3 today?

4 MR. PARKER: Yes, I have.

5 MR. LILLY: I am going to ask you to please exam
6 Exhibit YCWD-2.

7 Is this an accurate statement of your testimony for
8 this hearing?

9 MR. PARKER: Yes, it is, with one correction.

10 MR. LILLY: Please tell us what that correction is.

11 MR. PARKER: Yes. On Page 3, Item 9, it mentions --
12 center of the first sentence, "pursuant to Paragraph V5 of
13 '59 OWID-YCWD agreement." That should be changed to read
14 Paragraph VF and Paragraph VA2.

15 MR. LILLY: With that correction, this is an accurate
16 statement of your testimony for this hearing?

17 MR. PARKER: It is.

18 MR. LILLY: I am going to just ask you to summarize two
19 key areas in your testimony. And, if necessary, we may have
20 to look at these two easels. And maybe, Mr. Grinnell, you
21 can just move those others so they are a little easier for
22 Mr. Parker to see.

23 The first question I am going to ask you is regarding
24 the water that the Yuba County Water District is authorized
25 to receive at the Forbestown Ditch under the 1959 agreement

1 between OWID and YCWD. First of all, if you need to you can
2 look at this agreement which I believe is Exhibit YCWD-13,
3 but under Paragraph 2C1 is YCWD entitled to receive 37,000
4 acre-feet per year of water from the Woodleaf Penstock and
5 the Forbestown Ditch?

6 MR. PARKER: That is my understanding.

7 MR. LILLY: I think Figure 2 from Exhibit YCWD-5, which
8 is the right poster, shows the point, is that point where
9 that water comes out known as SF-14 Penstock?

10 MR. PARKER: Yes, it is.

11 MR. LILLY: And then under Paragraph 2 C-4 of the 1959
12 agreement, is YCWD also entitled to receive surplus water at
13 turnout SF-14 when such water is available from the project?

14 MR. PARKER: Yes.

15 MR. LILLY: Now, following that water down the
16 Forbestown Ditch, where does YCWD divert from the Forbestown
17 Ditch for irrigation purposes?

18 MR. PARKER: Actually, OWID does diversions now at a
19 request. But they make the diversions into -- at a point
20 called Costa Creek Turnout.

21 MR. LILLY: Is that point also shown on Figure 1 from
22 -- Figure 2 from Exhibit YCWD-5, where it says in red Costa
23 Creek Turnout?

24 MR. PARKER: Yes.

25 MR. LILLY: And then after that water is delivered into

1 Costa Creek, where does it flow?

2 MR. PARKER: It flows down across that creek to its
3 confluence with Dry Creek and then Dry Creek to a small
4 diversion down known as the Brownsville Diversion Dam.

5 MR. LILLY: Then where does the water go from there?

6 MR. PARKER: Twenty-three miles to Dobbins-Oregon House
7 Canal to the Communities of Dobbins and Oregon House.

8 MR. LILLY: Is that Dobbins-Oregon House Canal also
9 shown on Figure 2 of Exhibit YCWD-3?

10 MR. PARKER: Yes, it is.

11 MR. LILLY: In general terms where is that water then
12 used for irrigation?

13 MR. PARKER: In general terms, just in the
14 Dobbins-Oregon House area known as Improvement District No.
15 1.

16 MR. LILLY: Does YCWD have enough water to supply all
17 of its present demands for irrigation water?

18 MR. PARKER: No.

19 MR. LILLY: Is there a waiting list for additional
20 people who would like to receive water from YCWD for
21 irrigation?

22 MR. PARKER: Yes, there is.

23 MR. LILLY: Approximately how many requests are on that
24 waiting list?

25 MR. PARKER: There are over 70 requests and I probably

1 should add that the list is spontaneous. We have not
2 advertised. People have been under the impression that we
3 are under a moratorium or we have been under moratorium
4 since 1985. As water were available, we could expect a
5 significant increase in the waiting list, I am sure.

6 MR. LILLY: Going back to the Forbestown Ditch, where
7 does YCWD receive water from the Forbestown Ditch for
8 domestic purposes?

9 MR. PARKER: At the Forbestown treatment plant,
10 located in small town of Forbestown.

11 MR. LILLY: Is that shown on Figure 2 of Exhibit YCWD-5
12 in red as YCWD Treatment Plant?

13 MR. PARKER: Yes, it is.

14 MR. LILLY: After the water is treated where is it
15 delivered for domestic use?

16 MR. PARKER: Through 32 miles of domestic mainlines to
17 the communities of Challenge, Brownsville, Forbestown and
18 Racherby.

19 MR. LILLY: Mr. Parker, the second key area of your
20 testimony that I would like you to summarize concerns the
21 4,500 acre-feet per year of water that Yuba County Water
22 District is entitled under Paragraph 2C-2 of the 1959
23 agreement to receive at Miners Ranch Reservoir. But are you
24 familiar with that particular provision of the 1959
25 agreement, at least in general terms?

1 MR. PARKER: Yes.

2 MR. LILLY: I am going to ask you now to refer to other
3 exhibit, which is Exhibit YCWD-4A, which is the other poster
4 up here.

5 Is the location of the Miners Ranch Reservoir shown on
6 that exhibit? If you need to, you can go up and look. I
7 didn't mean for this to be a vision test.

8 MR. PARKER: Yes, it is.

9 MR. LILLY: Now, is it feasible for the Yuba County
10 Water District to use water from the Miners Ranch Reservoir
11 directly into Yuba County Water District's service area?

12 MR. PARKER: No.

13 MR. LILLY: Why is that?

14 MR. PARKER: From a feasibility standpoint it is quite
15 distant. From a practical standpoint it is a very much
16 lower elevation than the service area for our district in
17 general.

18 MR. LILLY: There was discussion this morning about the
19 10,500 acre-feet per year of water that is addressed under
20 Paragraph C-2-3 of the 1959 agreement.

21 Are you familiar with that particular water?

22 MR. PARKER: Yes.

23 MR. LILLY: What is your understanding of the
24 discussion of storage facilities that is included regarding
25 that water?

1 MR. PARKER: My understanding, which is not meant to be
2 an interpretation of the contract, but from reviewing the
3 records is that there was an agreement with Brownsville
4 Irrigation District and in order to facilitate an exchange
5 of water in upper Dry Creek basin that 10,500 would be
6 transferred to Brownsville Irrigation District, and they in
7 turn would release water rights to us in upper Dry Creek
8 basin. That since -- since construction of BVID Collins
9 Reservoir that no longer is a practicality.

10 MR. LILLY: So that never occurred, basically.

11 MR. PARKER: That will likely never occur.

12 MR. LILLY: Shifting back to the 4,500 acre-feet per
13 year of water under Paragraph 2 C-2, what has YCWD done with
14 this water instead of using it directly?

15 MR. PARKER: We have made the water available for power
16 generation for sale to PG&E. And after it spills from the
17 Kelly Ridge Powerhouse, we've sold the water to the City of
18 Yuba City.

19 MR. LILLY: How much does the city of Yuba City
20 currently pay YCWD each year for this water?

21 MR. PARKER: Approximately \$80,000.

22 MR. LILLY: How important is this revenue to YCWD?

23 MR. PARKER: If not for the sale of water to Yuba City
24 we would be compelled to raise our irrigation rates by as
25 much as 90 percent and our domestic rates by as much as 25

1 percent.

2 MR. LILLY: So what percentage of your district's
3 annual budget does this \$80,000 per year represent?

4 MR. PARKER: I believe between 14 and 15 percent.

5 MR. LILLY: Thank you.

6 I have no further questions for you, Mr. Parker. Maybe
7 you can shift the microphone over to Mr. Grinnell.

8 MR. PARKER: Thank you.

9 MR. LILLY: Mr. Grinnell, first of all, I think you
10 have to get a little closer to the microphone for it to
11 work.

12 Please state your name and spell your last name for the
13 record.

14 MR. GRINNELL: My name is Stephen Grinnell,
15 G-r-i-n-n-e-l-l.

16 MR. LILLY: Have you taken the oath for this hearing?

17 MR. GRINNELL: Yes, I have.

18 MR. LILLY: Please examine Exhibit YCWD-3. Do you have
19 that in front of you?

20 Is this an accurate statement of your education and
21 work experience?

22 MR. GRINNELL: Yes, it is.

23 MR. LILLY: Now please examine Exhibits YCWD Exhibit 4
24 and 5.

25 Are these accurate statements of your testimony for

1 this hearing?

2 MR. GRINNELL: Yes, they are. I have two corrections.

3 MR. LILLY: Please tell us what the corrections are.

4 MR. GRINNELL: The first correction is on Page 4 of
5 YCWD-4. In the first paragraph, last sentence, the word
6 "use" should be "year."

7 MR. LILLY: So that would then read, "850 acre-feet per
8 year"?

9 MR. GRINNELL: That's correct.

10 Also on Page 22, the last sentence of the second
11 paragraph, which reads, "This accretion if available can be
12 used to supplement flows from Miners Ranch Canal and Palermo
13 Canal, thus increasing available supplies."

14 That sentence should be stricken and although it is
15 physically correct, I believe under the water rights
16 diversion out of Ponderosa Reservoir for the uses discussed,
17 it would not be allowed.

18 MR. LILLY: Does that change, affect, any of the
19 quantitative or technical analyses that are described in
20 your exhibits?

21 MR. GRINNELL: No. As the previous sentence says, we
22 do not use those accretions to Ponderosa Reservoir as part
23 of our water supply analysis and, therefore, we do not
24 impact the results or our conclusions.

25 MR. LILLY: Finally, I am going to ask you to just take

1 a look at Exhibit YCWD-4A and tell us what this is.

2 MR. GRINNELL: This is a update to Figure 1 from
3 YCWD-4, which includes the items which you previously
4 described.

5 MR. LILLY: Are those the only changes between Figure 1
6 of Exhibit and this Exhibit 4A, aside from the fact that
7 the scale is probably slightly different?

8 MR. GRINNELL: Yes, I believe it is.

9 MR. LILLY: With that, I ask you to please summarize
10 your testimony.

11 MR. GRINNELL: My testimony describes the engineering
12 analysis and review of three issues which I performed
13 related to the key issues to be addressed in this
14 proceeding. The issues I examined are the Yuba County Water
15 District projected future demands, the plan conveyance
16 project of the Yuba County Water District to deliver water
17 from the Woodleaf Penstock to the service area and analysis
18 of the water available from the operations of the South Fork
19 Project to meet Yuba District's future demands and OWID
20 future demands.

21 Slide one is from Page 28 of YCWD-4. It is the
22 conclusions of my analysis, and I have highlighted the
23 pertinent points. The first is that the analysis of demand
24 shows that the Yuba County Water District has a long-term
25 20-40 estimated water supply demand within its service area

1 of 27,000 acre-feet, of which 23,700 acre-feet can be
2 supplied from the South Fork Project under Permits 11518 and
3 11516.

4 Secondly, that the district has plans to develop a
5 conveyance project to deliver this supply from the Woodleaf
6 Penstock of the South Fork Project to its service area.
7 Conveyance project is feasible and necessary to deliver this
8 water to the service area.

9 Third, there is ample water available from the South
10 Fork, Feather River, Slate Creek and tributaries through
11 operation of the South Fork Feather River Project to meet
12 the projected future demands of both YCWD and Yuba County
13 Water District without imposing shortages on either
14 district.

15 Yuba County Water District currently provides water for
16 both domestic and irrigation uses within its service area,
17 and as we have heard the district is water short. The
18 shortage is as a result of economic conveyance and
19 contractual limitations. Presently development is limited
20 by this shortage.

21 For the future, the most likely type of development in
22 the region is large residential lots or small family farms,
23 ranging from one to 40 acres, suitable for rural residential
24 lifestyle. Rural residential and family farming development
25 is essential to the economic growth of the Yuba County

1 foothill area. Currently this area of Yuba County has one
2 of the lowest household per capita income rates in
3 California.

4 Economic viability for families in Yuba County often is
5 dependent upon supplemental income. Small family farms with
6 a few head of cattle, other livestock or horse boarding are
7 ways that families generate supplemental income. In
8 addition, small irrigated crops of few acres provide food
9 for the family table and fruits and vegetables for local
10 sale. This type of rural development is currently the trend
11 within Yuba County Water District and provides the basis for
12 economic development within the area.

13 This Figure 2 from YCWD-4 is a picture of this type of
14 development, a residence with a small irrigated pasture and
15 a few head of cattle.

16 Figure 2 from YCWD-5 shows the community areas used for
17 the projection of future demands. Of these 120,000 acres
18 within the district, a gross total community area of
19 approximately 12,700 acres was identified. Of that 12,700
20 acres 4,760 is projected to be irrigated and 4,160 of that
21 is projected to be served from the South Fork Project. The
22 figure shows highlighted the community areas and the legend
23 details the coloring of each one. Some of the areas
24 highlighted were not projected to receive waters from the
25 South Fork Project.

1 Table 3 of YCWD-4 is the portion of the total Yuba
2 County Water District demand from the South Fork Feather
3 River Project that would be delivered at the head of the
4 Forbestown Ditch at the Woodleaf Penstock. And this demand
5 is broken up into two -- actually three increments:

6 One is the domestic service, serving a projected
7 population of 8,780 with the water demand of 1,190
8 acre-feet per year.

9 The second is serving irrigated acreage but through the
10 rural domestic system. And of that which is consistent with
11 the type of development that is going on within Yuba County
12 Water District.

13 The third is irrigated acreage to the raw water system,
14 primarily being served through the Dobbins-Oregon House
15 Canal. The total demand of the 23,700 acre-feet per year.

16 The Forbestown Ditch does not have the capacity to
17 provide the needed water supply demand for both districts.
18 From the current capacity of 2,400 cubic feet per second --

19 MR. LILLY: You misspoke, 24, not 2,400.

20 MR. GRINNELL: I'm sorry, 24 cfs. Twelve cfs is
21 provided to Yuba County Water District and 12 cfs is
22 provided to OWID. In addition, a number of conditions in
23 the ditch are less than optimal for current operations.
24 These conditions include -- the ditch alignment is on
25 hillsides with a thick vegetation cover, and which

1 constantly encroaches on the narrow ditch access.

2 At many points there have been minor landslides which
3 partially impede the flow. The ditch alignment also crosses
4 some larger slides and failure of these slopes would result
5 in interruption of water deliveries. Water is lost by
6 seepage through the earthen bottom, which is significant
7 because of soil conditions, as can be seen in the picture,
8 which is Figure 3 from YCWD-4.

9 In the area of past landslides where plumes have been
10 built across the steep slopes, these plumes are vulnerable
11 to fire, which would also severely compromise water supply
12 reliability.

13 And lastly, the ditch passes through populated areas
14 and this access ability makes the water supply susceptible
15 to contamination.

16 Due to the limited reliability and capacity of the
17 ditch, the Yuba County Water District has studied
18 alternative conveyances to meet future demands. Based on
19 this evaluation of the alternatives, a pressure pipeline
20 that follows a relatively direct route from the Woodleaf
21 Penstock to Costa Creek Turnout and on to the Forbestown
22 Treatment Plant was selected for the project. Because this
23 alternative does not require the abandonment of the existing
24 ditch, OWID could continue to operate the ditch for its own
25 uses. Alternatively, OWID could participate in the project.

1 Figure 4 is a map of the proposed pipeline alignment.
2 As you can see, it runs from the Woodleaf Penstock, SF-14,
3 and generally takes a, well, with reference to the existing
4 ditch, a beeline to the Costa Creek Turnout and then onto
5 the treatment plant.

6 MR. LILLY: I don't know if you said it, Mr. Grinnell,
7 that is Figure 4 from Exhibit YCWD-4.

8 MR. GRINNELL: Yes.

9 The third area of the engineering analysis that I
10 performed was to examine the ability to meet both the Yuba
11 County Water District's future demands and the OWID's future
12 demands through the operation of the South Fork Project. To
13 perform the analysis OWID's future demands needed to be
14 determined. In order to determine the future demands, an
15 estimate of present demands was needed.

16 Figure 5 is a chart of the reported -- Figure 5, that
17 is from YCWD-4, is a chart of reported water use for period
18 1982, 1998. The red bars are the annual water use for OWID
19 and the yellow are the Yuba County Water District
20 Forbestown Ditch deliveries at the Woodleaf Penstock. The
21 '82 to '98 annual average OWID reported water use is 25,800
22 acre-feet.

23 In order to determine Oroville-Wyandotte's future
24 demand the present status of the irrigated lands and
25 population served is needed along with an understanding of

1 the changes that will most likely occur in the future. To
2 determine the potential land area that may be irrigated in
3 the future, a geographic information system-based analysis
4 was performed. In addition, a field survey was completed to
5 assess the present development pattern and verify the
6 results of the GIS analysis. This analysis consisted of
7 using two sources of data that provide information on land
8 cover and land use in Butte County.

9 Table 7 lists the land classifications, the
10 corresponding land areas within each classification, the
11 percentage that is irrigable and the net irrigated acreage.
12 As you can see, the net irrigated in total, irrigated
13 acreage, is 7,151 acres.

14 Using a net irrigated acreage of 7,151 acres and
15 applied water rate of 4.6 acre-feet per acre results in an
16 irrigation demand of 32,900 acre-feet per year. Accounting
17 for conveyance losses, estimated at 15 percent, results in
18 diversion demand for irrigation of 38,700 acre-feet per
19 year.

20 The future domestic demand is estimated at 12,550.
21 Essentially, this is a doubling of the estimated present
22 demand. We had it estimated a little over 6,000 acre-feet
23 per year as the domestic demand to be delivered at Miners
24 Ranch Reservoir to the water treatment plant. The combined
25 future irrigation and domestic demand of the OWID service

1 area at the proposed place of use, therefore, is about
2 51,250 acre-feet per year.

3 In order to assess the South Fork Project's ability to
4 meet the demand of the two districts we developed an
5 operational model of the system to simulate a multiconcept
6 for a 71-year simulation period of all the major regulated
7 facilities of the project.

8 Three scenarios were developed. Scenario one is a
9 base case that includes all the major diversion demands of
10 the system. The base case includes the historic average and
11 that being from recent historic average, from 1989 to 1998,
12 present demands for both districts.

13 Scenario two simulates a system identical to scenario
14 one with the exception that the projected future Yuba County
15 Water District demands at the head of the ditch of 23,700
16 acre-feet is used. And also the 4,500 acre-feet demand for
17 the Yuba City area to the Kelly Ridge Powerhouse was
18 removed.

19 For scenario three the system future demands area
20 includes the future demands for both districts, the 23,700
21 for Yuba District and 21,250 for OWID.

22 The results show that there would be no shortages in
23 meeting demands during any of the 852 months of the 71-year
24 study for any of the simulations. And in examining the
25 ability for the system to meet these water supplies we

1 examined drought conditions to get a sense of how the system
2 would be operating under those conditions.

3 Two severest California drought periods, the '28 to '34
4 and '76 to '77 periods we used to illustrate system
5 performance.

6 Figure 10 is a graph of the '28 to '34 time period. On
7 the top is the Little Grass Valley Reservoir monthly, end of
8 month storage for that time period and the lower graph is
9 the Sly Creek Reservoir end of month storage.

10 The top line is generally in all of the cases is the
11 base case. It is the dark blue line. The light blue line
12 is the scenario two, which has the future demands just for
13 Yuba County Water District, and the green line has scenario
14 three which is the system future demands.

15 The lowest combined storage for this drought for the
16 two reservoirs was 52,000 acre-feet in November of 1934.
17 During this entire time frame all of the projected demands
18 of both districts are being met with no shortage, and there
19 is, as described in Mr. Onken's testimony, the carryover
20 storage amount in November, the minimum amount in November
21 of '34, would be combined carryover storage of 52,000
22 acre-feet.

23 MR. LILLY: I think you should clarify. You're using
24 Mr. Onken's definition of carryover storage; is that
25 correct?

1 MR. GRINNELL: Yes.

2 MR. LILLY: It is not his -- these numbers are not in
3 his testimony?

4 MR. GRINNELL: Only talking about the definition.

5 MR. LILLY: Thank you.

6 Please proceed.

7 MR. GRINNELL: Figure 11 is the same graph, type of
8 graph, only for the '76 to '78 water years. And as we know,
9 1977 was a very severe year, drought year. The color lines
10 are the same. Scenario one being the base case and the dark
11 blue line. Scenario two being the light blue line, which is
12 the future demands for the Yuba County Water District. And
13 then the green line is the system future demand.

14 Under this time period, the minimum carryover storage
15 amount as you can see November of '77 combined is about
16 32,000 acre-feet. Again, this is with no shortages to
17 either of the districts' future demands.

18 In summary, this analysis has shown that there is ample
19 water in the system to meet the projected future demands for
20 both districts and that the system can be operated to meet
21 those demands.

22 MR. LILLY: Does that complete the summary of your
23 testimony?

24 MR. GRINNELL: Yes, it does.

25 MR. LILLY: These witnesses are now both available for

1 cross-examination.

2 H.O. BROWN: Thank you, Mr. Lilly.

3 Mr. Baber.

4 MR. BABER: Thank you, Mr. Chairman.

5 ---oOo---

6 CROSS-EXAMINATION OF YUBA COUNTY WATER DISTRICT

7 BY OROVILLE-WYANDOTTE IRRIGATION DISTRICT

8 BY MR. BABER

9 MR. BABER: Mr. Grinnell, in preparing this testimony
10 were you familiar with the Yuba County Water District's
11 request to include the City of Yuba City within its place of
12 use?

13 MR. GRINNELL: Yes, I am familiar with that request.

14 MR. BABER: Does your testimony that you presented
15 today support that request?

16 MR. GRINNELL: Yes. In fact, it shows that because of
17 the ample water supplies of the South Fork Feather River
18 Project that there would be no injury to OWID by supplying
19 this 4,500 acre-feet to Yuba City.

20 MR. BABER: In supplying the 4,500 acre-feet to Yuba
21 City you were also familiar with the 1959 agreement, correct?

22 MR. GRINNELL: Generally, yes.

23 MR. BABER: And that the 1959 agreement requires that
24 the 4,500 acre-feet of water be delivered to Yuba County
25 Water District for delivery to Yuba City, correct?

1 MR. BABER: Mr. Grinnell, madame secretary, could you
2 please read my last question and answer back?

3 (Record read as requested.)

4 MR. BABER: Mr. Grinnell, in connection with the
5 preparation of your expert testimony here today regarding
6 the future water demands of Yuba County Water District, did
7 you consider the petition of Yuba County Water District
8 which is before this Board to supply Yuba City with water
9 and to include it within the place of use?

10 MR. GRINNELL: Yes, I did consider it.

11 MR. BABER: You considered the 4,500 acre-feet that
12 Yuba City has been receiving from Yuba County Water
13 District?

14 MR. GRINNELL: Correct. We included it in our base
15 case simulation. We included the 4,500 acre-feet.

16 MR. BABER: And did you ever receive any information
17 before preparing your testimony that the city of Yuba City
18 had ever been denied that 4,500 acre-feet?

19 MR. GRINNELL: No. I am not aware of any information
20 that Yuba City has been denied that water.

21 MR. BABER: In fact, for the last 30 years did you know
22 that Yuba City has, in fact, received that 4,500 acre-feet?

23 MR. GRINNELL: I know that by reviewing documents
24 provided for this hearing, yes.

25 MR. BABER: Can I ask you why then you prepared your

1 testimony estimating future water supply demands and what
2 the relevance was to the request of Yuba County Water
3 District to include Yuba City in its place of use?

4 MR. GRINNELL: My testimony was prepared to provide
5 information to the Board to make determinations relevant to
6 the key issue that it noticed in the hearing, specifically
7 issues relating to the issue of the two permits, 11516 and
8 11518, for instance key issue two, if the SWRCB grants
9 extension of time, what condition should be included to
10 protect the public interest, if the extension -- if the time
11 extension petitions are approved, what period of time is
12 appropriate for completion of the project.

13 Under that also addressing issues relating to the
14 question if the SWRCB should not approve an extension of
15 time, should the SWRCB find that there is cause to revoke in
16 part or in full Permits 11516 or 11518.

17 Further down I think we are directly providing
18 information to the Board to determine issues that if Permits
19 11516 or 11518 is partially or fully revoked, what effect
20 will such action have water availability to Yuba County
21 Water District? Should any actions be taken to address the
22 effects on Yuba County Water District?

23 Finally, in issue three, should the SWRCB delete the
24 permit conditions in Permits 11516 and 11518, referencing
25 the water supply agreement between OWID and YCWD.

1 I think what my testimony shows is that Yuba County
2 Water District, number one, has been limited by the contract
3 term and the recognition of that in the permits. That the
4 Yuba County Water District does have greater demand and will
5 have greater demand in the future, and that this Board
6 should recognize that in its decisions what to do about
7 these issues.

8 MR. BABER: So then it is your testimony, Mr. Grinnell,
9 that this Board in deciding whether to extend the time
10 necessary to apply water to beneficial use under 11516 and
11 11518 and to include the city of Yuba City in Yuba County
12 Water District's place of use, this Board should remove the
13 1959 agreement from a condition of permits 11516 and 11518
14 because it is unduly restrictive; is that what your
15 testimony is presented for?

16 MR. GRINNELL: Well, it is -- as I said, these are a
17 number of different issues here.

18 MR. BABER: I am asking you about that one specific
19 issue.

20 MR. GRINNELL: You asked about Yuba City and also asked
21 about my testimony regarding the permit, the contract. So
22 --

23 MR. BABER: I am asking you if your testimony is
24 presented here today to support a request that this Board
25 remove the '59 agreement from conditions of Permits 11516

1 and 11518.

2 MR. GRINNELL: My testimony is presented for
3 information for the Board to -- I think the Board has a
4 number of different ways that it can proceed.

5 MR. BABER: I am asking about that one way.

6 MR. GRINNELL: Certainly, if the Board, if that is the
7 direction that the Board wishes to go, my testimony does
8 support that as a potential direction.

9 MR. BABER: Is that a yes?

10 MR. GRINNELL: Well, yes, it is a yes. But it is
11 qualified by saying that that my testimony is not solely in
12 support of that direction for the Board. My testimony is --
13 I believe that this Board has a number of different
14 directions that it can go and that is addressed by the key
15 issues that are identified in the hearing notice. And one
16 of those directions, yes, is to delete the permit condition
17 that recognizes the '59 agreement. And certainly my
18 testimony talks to that issue, but it also talks to other
19 directions that the Board could go.

20 MR. BABER: Does your testimony support requesting this
21 Board to extend the request for extension of time of Permits
22 11516 and 11518 and remove OWID from the permits and put
23 them in the name of Yuba County Water District solely?

24 MR. GRINNELL: Well, I haven't provided testimony as to
25 removing OWID from the permits. So they're -- you really

1 have asked two questions. I believe the first part of your
2 question was to ask about the extension of time. And I
3 think that my testimony does show that because of the
4 conditions of that agreement, which Yuba County Water
5 District is a party to, that conditions are going to
6 substantially change for the district in 2010. That they
7 will have moneys available to them, and also there is in
8 2010 a relicensing coming up. And, therefore, after 2010
9 conditions will be significantly different than they are
10 right now. And, therefore, there would be opportunities for
11 Yuba County Water District to put the waters that I have
12 identified as demands to beneficial use within the
13 district.

14 So, yes, I believe that this Board should consider
15 those issues when it reviews the extension of time,
16 realizing that conditions will change in 2010. That is the
17 first part of the question. The second part, which was
18 about OWID being removed from the permits, again that is a
19 direction that the Board could go. And, you know, maybe a
20 viable way to deal with the issues that need to be addressed
21 here.

22 MR. BABER: Then I am gathering from your answer that
23 your testimony about the future water demands of Yuba County
24 Water District not necessarily serving the 4,500 acre-feet
25 to Yuba City, which you say have never been a problem, but

1 for Yuba County Water District is for its future demands
2 after the expiration of the license in 2010 but not today;
3 is that correct?

4 MR. GRINNELL: Some of these demands are, as Mr. Parker
5 has identified, some of the demands are in evidence today.
6 They are here today, and only limited by the contract terms
7 which limit Yuba County Water District to 3,700 acre-feet.
8 So, certainly my testimony talks to the current condition
9 today. But, again, it focuses on directing towards the
10 issues raised by the water rights, not necessarily
11 contract. The water rights, this is focused to the issue
12 raised for the water rights.

13 MR. BABER: If Yuba County Water District had developed
14 upstream storage facilities in Canyon Creek and New York
15 Flat Reservoir as it agreed to do in the '59 agreement,
16 starting in '64, would its water supply situation be better
17 than it is today?

18 MR. LILLY: Objection. May I state my objection,
19 please?

20 H.O. BROWN: Sure.

21 MR. LILLY: First of all, to the extent that that
22 question said has the Yuba County Water District agreed to
23 in the 1959 agreement, I object. That misstates prior
24 testimony and evidence. There is nothing in that agreement
25 that commits Yuba County Water District to build those

1 facilities. That is just an incorrect statement of prior
2 testimony.

3 Furthermore, I object on the grounds that this question
4 really is calling for speculation, regarding if some
5 hypothetical thing had happened 40 years ago that did not,
6 what would happen. I am not sure that this has much benefit
7 to this Board in this hearing.

8 H.O. BROWN: Mr. Baber.

9 MR. BABER: Well, Mr. Chairman, I think the contract is
10 a prime subject of interpretation for this Board and its
11 staff. Unfortunately or fortunately, it is a part of D 838
12 and D 907. It commits both districts to build certain
13 facilities. OWID built them and Yuba County Water District
14 didn't.

15 The testimony that we are hearing today is not related
16 necessarily to the inclusion of the city of Yuba City in a
17 place of use, for the extension of time for place of use.
18 What it is is a water grab.

19 H.O. BROWN: Mr. Lilly, anything more?

20 MR. LILLY: I don't think that argument had anything to
21 do with my objection, so I will stand by my objections and
22 suggest that Mr. Baber ask questions. This is not the time
23 for argue making. He can make his argument later on.

24 MR. BABER: I will rephrase my question.

25 H.O. BROWN: One at a time.

1 MR. LILLY: This is questioning of Mr. Grinnell.

2 H.O. BROWN: Mr. Frink, you have an opinion on this?

3 MR. FRINK: I think that the objection had a valid
4 point to that extent that it was based upon an assumed
5 interpretation of the contract.

6 Secondly, the other part of the question, I guess, was
7 if you Yuba County Water District had built New York Flat
8 Reservoir would it be in a better position to serve its
9 needs today than it is now. And I guess that is an
10 appropriate question if it is separated from the
11 interpretation of the contract.

12 H.O. BROWN: Seems like probably an obvious question.
13 I will allow the second part of the question.

14 MR. BABER: Thank you, Mr. Chairman.

15 Do you understand the question, Mr. Grinnell?

16 MR. GRINNELL: If the question is if the district had
17 built New York Flat, would they be in a better position
18 today from a water supply standpoint than they are. I think
19 that Mr. Brown is right; it is an obvious answer, yes, they
20 would be in a better position from a water supply
21 standpoint.

22 MR. BABER: Thank you.

23 Do you have any knowledge why they didn't build New
24 York Flat?

25 MR. GRINNELL: Not in detail. I do know that there was

1 a referendum or bond issue to finance the project that
2 failed.

3 MR. BABER: That is a referendum in Yuba County?

4 MR. GRINNELL: Yes.

5 MR. BABER: And the voters in Yuba County voted it down?

6 MR. GRINNELL: That is what I understand. Now the
7 issue regarding that I am not fully aware of.

8 MR. BABER: Thank you.

9 Mr. Grinnell, if your testimony is directed to the key
10 issues you were identifying from the State Board's Notice of
11 Hearing, one of which was if the State Board granted an
12 extension of time to Permits 11516 and 11518, what
13 conditions should be included, in your opinion, to protect
14 the public interest?

15 MR. GRINNELL: I am not going to presuppose what the
16 Board should do. That is the Board's role and not mine in
17 doing this testimony, as far as the protection of public
18 interest.

19 MR. BABER: The reason I asked that is that you have
20 given us beautiful, lengthy testimony here in Exhibits 4 and
21 5, and said it was directed to the issues, one of which was
22 that which you identified, and I am wondering what part of
23 your testimony supports that key issue.

24 MR. GRINNELL: Well, I think I identified and read Item
25 2 -- Should the SRWCB approve the petition for extension of

1 time for the two permits? If the SWRCB grants an extension
2 of time, what conditions should it include to protect the
3 public interest?

4 The reason I identified that one is that should the
5 Board consider -- when considering the petitions for
6 extension of time, I believe that sometimes the Board
7 considers putting limits on permits. And to the extent that
8 those limits might limit the Yuba County Water District's
9 future development as I've identified for an estimate of
10 future demands, and my testimony talks to that issue.

11 MR. BABER: When you say "limits," you're talking in
12 terms of time limits?

13 MR. GRINNELL: Both time for development and in amounts
14 of water.

15 MR. BABER: You have an opinion from your testimony as
16 to what time limits the Board should impose?

17 MR. LILLY: I am going to object. The question is
18 ambiguous because it may be different for Yuba County Water
19 District versus OWID, and I think he should split it up if
20 he wants to go forward with it.

21 MR. BABER: I am calling for Yuba County Water
22 District, because, Mr. Lilly, I think you mentioned in your
23 opening statement you wanted the Board to remove OWID from
24 11516 and 11518, so I'm talking to Yuba County Water
25 District.

1 MR. GRINNELL: Well, my estimates have been for up to
2 2040. Certainly, as I have said, in 2010 conditions
3 change. Now if the district after 2010 enjoys the 50
4 percent of net proceeds of the South Fork Project after that
5 time, they will begin to have the monetary wherewithal, so
6 to speak, to improve its facilities and to serve its
7 district, service the area. To speculate what time frame
8 out beyond 2010 will take the Yuba County Water District to
9 fully put to beneficial use of waters I have identified, as
10 I said, my estimation was out to 2040.

11 So, I mean, that is the best time frame that I can look
12 at for this hearing.

13 MR. BABER: Thank you.

14 Mr. Parker, I believe you testified in your earlier
15 summary of your written testimony that Yuba County Water
16 District diverts -- as a matter of fact, OWID diverts, you
17 said, at Costa Creek, OWID runs the water down through SF-14
18 and down through Forbestown Ditch into Costa Creek, and that
19 is where the diversion is to Yuba County Water District.

20 Is that it right?

21 MR. PARKER: The diversion is at the Costa Creek
22 Turnout.

23 MR. BABER: Right.

24 MR. PARKER: From the Forbestown Ditch.

25 MR. BABER: That is referred to as Steppat's Weir?

1 MR. PARKER: That is the weir, a short distance
2 upstream of the actual diversion point.

3 MR. BABER: That gets water into Costa Creek for Yuba
4 County Water District?

5 MR. PARKER: Into a tributary of Costa Creek.

6 MR. BABER: For Yuba County Water District?

7 MR. PARKER: Yes.

8 MR. BABER: That is 3,700 acre-feet?

9 MR. PARKER: I'm sorry?

10 MR. BABER: Is that the 3,700 acre-feet?

11 MR. PARKER: No. That is the portion of -- portion
12 that goes to serve irrigation demands.

13 MR. BABER: Are you familiar with the 3,700 acre-feet
14 in the 1959 agreement?

15 MR. PARKER: Reasonably.

16 MR. BARBER: That is to be supplied by OWID to Yuba
17 County Water District, correct?

18 MR. PARKER: Correct.

19 MR. BABER: Has it ever been denied Yuba County Water
20 District?

21 MR. PARKER: No.

22 MR. BABER: That is all supplied pursuant to the 1959
23 agreement, correct?

24 MR. PARKER: That is my understanding.

25 MR. BABER: I believe you testified that is not enough

1 water supplies in your current situation in your Improvement
2 District Number 1; is that right?

3 MR. PARKER: That's correct.

4 MR. BABER: How much more water do you need?

5 MR. PARKER: We haven't computed the immediate need.
6 We know only that we have 70 additional applicants on a
7 waiting list now, and we have insufficient water to provide
8 for any of those.

9 MR. BABER: Are you requesting this Board to order
10 additional water supplies pursuant to your request to
11 include the city of Yuba City in the place of use of water
12 for Yuba County Water District and extend the time for
13 Permits 11515 and 11518?

14 MR. LILLY: I am going to object. That question is
15 compound. I think we'd all be better off if he'd split it
16 up into separate questions.

17 H.O. BROWN: I agree, Mr. Baber. Back off.

18 MR. BABER: Thank you, Mr. Chairman.

19 Mr. Parker, are you requesting the Board today to order
20 additional water supplies to be delivered by OWID to Yuba
21 County Water District in addition to the 3,700 acre-feet
22 that you divert out of Costa Creek into Costa Creek?

23 MR. LILLY: I'm going to object. That really calls for
24 a legal conclusion and legal position. To the extent this
25 witness has some factual understanding, that is fine. That

1 question really gets to be a mixture of fact and law.

2 H.O. BROWN: I understand that, Mr. Lilly, but with
3 that qualification I am going to allow the witness to answer
4 the question if you can.

5 MR. BABER: Do you understand the question?

6 MR. PARKER: No. Could you repeat it?

7 MR. BABER: Mr. Parker, are you requesting that this
8 Board order today that OWID provide more water supplies to
9 Yuba County Water District than the 3,700 acre-feet out of
10 the Forbestown Ditch diversion presently utilized by Yuba
11 County Water District?

12 MR. PARKER: I don't think we are asking for any
13 immediate increase in any allocation from the South Fork
14 Project, but rather to maintain the latitude to meet changed
15 conditions when the bonds are amortized in year 2010.

16 MR. BABER: You understand -- Strike that.

17 I understand from your previous testimony, Mr. Parker,
18 you said you don't have enough water now with the 3,700
19 acre-feet to supply your customers.

20 Is that correct?

21 MR. PARKER: With the limitations set forth in the 1959
22 contract, including the 3,700 acre-feet, and the flow
23 restriction of 12 cubic feet per second at Forbestown Canal,
24 that would be essentially correct.

25 MR. BABER: Have you ever requested to buy additional

1 water supplies from OWID understanding that you might be
2 able to do so for irrigation purposes?

3 MR. PARKER: I don't recall. I doubt it.

4 MR. BABER: With respect to the 4,500 acre-feet at
5 Miners Ranch Reservoir, I believe you testified that that is
6 delivered 30 miles downstream to -- some distance downstream
7 for delivery to Yuba County Water District customers; is
8 that right?

9 MR. PARKER: I don't recall the precise distance.

10 MR. BARBER: That's the water that's taken through the
11 Kelly Ridge Powerhouse and dropped down into the Feather
12 River for Yuba City?

13 MR. PARKER: Yes.

14 MR. BABER: And you've never been denied that supply,
15 have you?

16 MR. PARKER: Not that I can recall.

17 MR. BABER: What about the 10,500 acre-feet that you
18 were entitled to in the '59 agreement, why have you not used
19 that?

20 MR. PARKER: As I thought I explained earlier, the
21 intent for that water was to exchange with Browns Valley
22 Irrigation District for water rights in the upper Dry Creek
23 basin to facilitate other facilities, other water sources.

24 MR. BABER: If you had developed those facilities in
25 the '59 agreement within, let's say, five years after the

1 signing of the '59 agreement, would you have benefited from
2 that 10,500 acre-feet?

3 MR. LILLY: Objection. The phrase "those facilities in
4 the 1959 agreement" is vague and ambiguous. There are so
5 many different facilities in there, I think he needs to be
6 specific as to which ones he is talking about because I
7 think the question is different as to different facilities.

8 H.O. BROWN: Mr. Baber.

9 MR. BABER: Mr. Chairman, I refer to the '59 agreement,
10 Paragraph -- Part 2(C)(3) states, the first sentence:

11 After construction of storage facilities
12 adequate to store the water an additional
13 amount up 10,500 acre-feet to be delivered to
14 Yuba at Miners Ranch Terminal Reservoir
15 during the period of November 1 to the
16 following April 15 or May 1 in years when the
17 later date does not interfere with irrigation
18 needs, but limited to the needs of the area
19 in Yuba County designated by Yuba and to the
20 surplus water available during such periods
21 after all the following needs are met.

22 (Reading.)

23 Then it goes through other criteria. So the agreement
24 talks in terms of storage facilities adequate to store the
25 water built by Yuba, I suppose.

1 Are you familiar with that?

2 H.O. BROWN: Hold on, there is an objection.

3 Mr. Lilly.

4 MR. LILLY: Now he has asked a question, so now it is
5 appropriate that there be an answer. There was a long
6 statement with no question. That was my problem.

7 H.O. BROWN: All right. Go ahead and answer the
8 question.

9 MR. PARKER: Was the question, am I familiar with the
10 section Part 2(C)(3) of the 1959 agreement?

11 MR. BABER: Right, what I just read to you.

12 MR. PARKER: I am familiar by having read it for a --
13 periodically, over a long period of time.

14 MR. BABER: If those storage facilities had been
15 constructed with five years of signing of the '59 agreement,
16 would that have benefited Yuba County Water District?

17 MR. PARKER: It is my understanding that the facilities
18 that you're referring to were facilities to be constructed
19 by Browns Valley Irrigation District, not by Yuba County
20 Water District.

21 MR. BABER: Where did you get that understanding?

22 MR. PARKER: It says -- my understanding, by reviewing
23 the information that led to the agreement and basically
24 explaining the project from the briefs that were submitted
25 to the Board at that point in time.

1 CROSS-EXAMINATION OF YUBA COUNTY WATER DISTRICT

2 BY YUBA CITY

3 BY MR. GALLERY

4 MR. GALLERY: Mr. Parker, your testimony in Paragraph 7
5 refers to a three-party agreement. That is Yuba County
6 Water District 16. Do you have that agreement in mind?

7 MR. PARKER: Which item number, again?

8 MR. GALLERY: It is Yuba County Water District 16, a
9 1963 agreement between PG&E and the two districts and it
10 talks about payments for power generation at the different
11 powerhouses, No. 16.

12 MR. PARKER: Yep, I have that in mind.

13 MR. GALLERY: Was that the agreement under which
14 payments began to Yuba County Water District for power
15 generation at Kelly Ridge?

16 MR. PARKER: I believe that is correct.

17 MR. GALLERY: Is it -- so far as you know, has Yuba
18 County Water District been selling its 4,500 acre-feet at
19 Miners Ranch Reservoir to PG&E and collecting the dollar-50
20 per acre-feet since about 1963?

21 MR. PARKER: Since about 1963? I am not certain of the
22 precise date.

23 MR. GALLERY: And you testified, you state in your
24 Paragraph 9, you state -- you add in the bottom sentence of
25 your Paragraph 9, you state:

1 In the past when the Kelly Ridge Powerhouse
2 was not operating, OWID at Yuba County's
3 request released this water from Ponderosa
4 Reservoir into Lake Oroville for subsequent
5 release into the Feather River below Oroville
6 Dam and delivery to Yuba City. (Reading.)

7 MR. PARKER: Yes.

8 MR. GALLERY: How often has that occurred? Is that a
9 frequent occurrence? What is that about?

10 MR. PARKER: To the best of my recollection, that
11 occurred in a rare instance when the powerhouse was going to
12 be down for an extended period, and I believe OWID was
13 requested to release into Oroville Dam.

14 MR. GALLERY: That merely means that you lost a
15 dollar-50, but you were able to continue delivery to Yuba
16 City? Is that what that was about?

17 MR. PARKER: I believe that is so. I am not sure,
18 though, the overall effect it had on the power because they
19 don't know how that arrangement was in effect.

20 MR. GALLERY: The 1959 agreement between the two
21 districts talks about the diversion from Canyon Creek. So
22 far as you know, was that going to be a storage project or
23 just a diversion of the Canyon Creek water over into the
24 Feather Fork Project?

25 MR. PARKER: It is my understanding that it would be a

1 storage facility, and water would be diverted into the South
2 Fork Project and possibly some impounded in New York Flat
3 Reservoir.

4 MR. GALLERY: The New York Flat Project, that was
5 storage also?

6 MR. PARKER: Yes.

7 MR. GALLERY: Did it hold primarily the water that came
8 from Canyon Creek; was that what it was to do?

9 MR. PARKER: No, I don't believe so.

10 MR. GALLERY: What was the estimated size of New York
11 Flat that your district has considered in the past?

12 MR. PARKER: There have been several different
13 alternatives. I believe around 10,000 acre-feet was the one
14 most favored.

15 MR. GALLERY: And up at Canyon Creek, the size of that?

16 MR. PARKER: I don't recall.

17 MR. GALLERY: Then going back to the problem that you
18 have in utilizing the 10,500 acre-feet at Miners Ranch
19 Reservoir, as I understand, you said the concept was that
20 that would actually be used by Browns Valley and that it
21 would then relinquish to your district some Dry Creek water
22 rights?

23 MR. PARKER: That was my understanding from reviewing
24 the record.

25 MR. GALLERY: Then Browns Valley instead of that has

1 built Collins Reservoir?

2 MR. PARKER: Yes.

3 MR. GALLERY: Does that mean that those Dry Creek water
4 rights up there are no longer available? Are they gone now?
5 Is that as a result of that?

6 MR. PARKER: We have taken some of the Dry Creek water
7 rights to license, and if New York Flat would be pursued we
8 purpose to transfer those. Otherwise the water that OWID
9 could put to beneficial use would no longer be available
10 from Dry Creek basin.

11 MR. GALLERY: In any event, you testified, as I
12 understand it, because Browns Valley District has built
13 Collins Reservoir, the idea of an exchange so that you can
14 utilize the 10,500 acre-feet at Miners Ranch, that is no
15 longer feasible?

16 MR. PARKER: That is my understanding.

17 MR. GALLERY: Would that same thing be true with
18 respect to utilizing the 4,500 acre-feet at Miners Ranch?

19 MR. PARKER: That is my understanding as well.

20 MR. GALLERY: Just one more question of Mr. Grinnell.

21 Do I understand from your testimony, Mr. Grinnell, that
22 in your studies or in the operational studies that you have
23 made the South Fork Feather Project is capable of delivering
24 all of OWID's future needs without any need for the 4,500
25 acre-feet that is being sold to Yuba City?

1 MR. GRINNELL: That is correct.

2 MR. GALLERY: That is all I have, Mr. Chairman.

3 H.O. BROWN: Mr. Gallery.

4 Mr. Frink.

5 CROSS-EXAMINATION OF YUBA COUNTY WATER DISTRICT

6 BY STAFF

7 MR. FRINK: Yes, I have a few questions, Mr. Brown.

8 Mr. Parker, I wonder if you could identify what or
9 which of the water diversions or storage facilities
10 authorized in the Permits 11516 and 11518 that Yuba County
11 Water District has built?

12 MR. LILLY: I object on the ground he doesn't have
13 permits in front of him. I think it may be hard for him to
14 remember all the facilities in those permits. If you're
15 just asking for his best recollection, that is fine. But it
16 is really tough to ask him to remember those water permits
17 which are pretty detailed.

18 MR. FRINK: I will rephrase the question.

19 Let's start with the best of your recollection.

20 Of the facilities authorized under Permits 11516 and
21 11518, which of those water diversion or storage facilities
22 has Yuba County Water District built?

23 MR. PARKER: I am sorry, but I don't know which
24 projects were referred to in the two permits. I don't
25 recall.

1 MR. FRINK: Okay. I am going to defer to Ms. Mrowka on
2 this because I think she has a better understanding of what
3 all of the specific elements of the projects are, but I do
4 have at least one other question.

5 Does Yuba County Water District currently have any
6 plans to construct additional water diversion storage or
7 distribution facilities within the next, say, nine years
8 before the bonds are paid off?

9 MR. PARKER: We have been working on the conveyance
10 project that was described by Mr. Grinnell in his testimony,
11 namely to put the Forbestown Ditch in a hard line. The
12 board has considered New York Flat Project and reserved it
13 as a possible project to make future district needs. But
14 there are no concrete plans to move a road with that
15 project. There are, however, conveyance projects.

16 MR. FRINK: I missed the last part of your statement.
17 There are, however, what?

18 MR. PARKER: There are concrete plans to continue to
19 pursue the conveyance project.

20 MR. FRINK: What conveyance project is that?
21 Forbestown Ditch?

22 MR. PARKER: That would be a hard line to put the
23 Forbestown Canal in pipe so that you preserve the losses and
24 make that water available for use within the district.

25 MR. FRINK: When does the district intend to undertake

1 that?

2 MR. PARKER: Did you say when did the district?

3 MR. FRINK: Yes.

4 MR. PARKER: When do we intend to? It's in the process
5 presently. We began engineering work on the project and
6 pursuing grants, I think, about two years ago.

7 MR. FRINK: Mr. Grinnell, if you'd rather answer the
8 question that is fine.

9 MR. GRINNELL: We started the engineering and planning
10 about two years ago and then identifying funding.

11 MR. FRINK: How long of an area of the ditch do you
12 intend to line?

13 MR. GRINNELL: Well, actually, it wouldn't be a lining;
14 it would be replacing the ditch with respect to Yuba County
15 Water District's supplies. And the ditch is about nine
16 miles right now. It is replacing it with about six, just
17 under seven miles of pipeline.

18 MR. FRINK: What is the schedule for completion of that
19 project?

20 MR. GRINNELL: As soon as we get the funding.

21 MR. FRINK: Have you identified a desirable schedule?

22 MR. GRINNELL: Desire would be as soon as possible.

23 MR. FRINK: If you have the money today, how long would
24 it take to complete the project?

25 MR. GRINNELL: Construction would probably take at

1 least a year, given the terrain and weather conditions.

2 MR. FRINK: What sources of funding are you looking at
3 for that?

4 MR. GRINNELL: Local funding. The Yuba County Water
5 Agency has a grant and program. State funding, Prop 204,
6 Prop 13 moneys, and then there are several federal sources
7 for rural development. Those are both grant and loan
8 programs.

9 MR. FRINK: What is the estimated cost of upgrading the
10 ditch or replacing the portion that Yuba County Water
11 District wants to use?

12 MR. GRINNELL: Well, the range of cost, quite frankly
13 the range of cost depending upon the advance capacity which
14 has to be matched up with the amount of money that can be
15 made available. Certainly, the district would like to build
16 to its capacity to deliver its full future demand
17 requirements. That may or may not be fundable under the
18 programs that we are looking at.

19 So, it is kind of a difficult question to answer as to
20 cost, but in general it's in the 6- to \$8,000,000 range.

21 MR. FRINK: Is the district looking at a pipeline
22 project to replace that portion of Forbestown Ditch?

23 MR. GRINNELL: Yes.

24 MR. FRINK: What is the capacity of the pipeline that
25 you desire to have if you obtain funding?

1 MR. GRINNELL: The desired capacity is -- well, it is
2 actually two potential capacities. One would be 75 cfs,
3 which would meet the Yuba County Water District's own future
4 demands.

5 The second would be 80 -- I'm sorry, 72 cfs. 84 cfs is
6 if OWID would like to join in the project and deliver their
7 12 cfs that they currently deliver through the Forbestown
8 Ditch, depending upon whether or not OWID would be
9 interested in pursuing the project.

10 MR. FRINK: Was the pipeline identified in any of the
11 applications that preceded issuance of Permits 11516 and
12 11518?

13 MR. GRINNELL: I can't answer that directly. I don't
14 know if it was or not.

15 MR. FRINK: And the current capacity of Forbestown
16 Ditch is 24 cfs; is that correct?

17 MR. GRINNELL: That is my understanding, yes.

18 MR. FRINK: I believe that is all the questions I have.
19 I believe Ms. Mrowka may have more specifics.

20 H.O. BROWN: Ms. Mrowka.

21 MS. MROWKA: Thank you.

22 To follow up one quick question on Mr. Frink's
23 question. Have you completed a cost benefit analysis for
24 your conveyance project?

25 MR. GRINNELL: No, we have not. Well, no, we have

1 not. And I'll need to explain a little bit further. Cost
2 benefit analysis for a safe, reliable domestic water supply
3 is not necessarily applicable. This is the domestic water
4 supply and the only water supply for the Forbestown
5 Treatment Plant, and, therefore, cost benefit from a pure
6 monetary standpoint is not necessarily applicable. We have
7 looked at it, but the district's goal is for a reliable,
8 safe water supply as its primary goal for a pipeline
9 project. That takes it out of the realm of pure monetary.

10 MS. MROWKA: Have you reviewed how much surcharge you
11 would have to charge the current district's customers to
12 complete the project?

13 MR. GRINNELL: Well, we have looked at it a little bit
14 differently. We'd look at what the rates are and
15 potentially what could be withstood by the ratepayers, and
16 looked at that as part of the funding. We are looking at
17 substantial grant moneys because the full cost of this
18 facility could not be borne by the ratepayers. This area is
19 not a wealthy area. The median household income I think in
20 the 1990 census for this area was something like \$19,000 per
21 year per family, per household. And so it is a challenge to
22 develop funding for a project such as this.

23 Certainly, some of the funding would be through additional
24 water supplies where they could serve additional customers
25 and receive moneys through those increased services. But

1 there would have to be substantial grant moneys in order to
2 facilitate the project.

3 MS. MROWKA: Returning to one of Mr. Frink's earlier
4 questions, I would like to ask what type of facilities under
5 Permits 11516 and 11519 YCWD has completed. And to assist
6 this I am using the supplement to the hearing notice.

7 The supplement says that there is an authorized 300
8 cubic foot per second direct diversion rate under Permit
9 11516 from Slate Creek. Has YCWD built this facility for
10 diversion from Slate Creek?

11 MR. LILLY: Excuse me, Ms. Mrowka, are you referring to
12 the supplement to the hearing notice or the supplement to
13 notice of petitions?

14 MS. MROWKA: They are actually identical.

15 MR. LILLY: I will hand -- I didn't have the
16 supplement attached to mine. I see, it is here. Okay.

17 MS. MROWKA: Let me simplify this. There is -- on Page
18 2 of that supplement there is direct diversion rate and
19 season of diversion rate listed for both Permits 11516 and
20 11518. It names direct diversion rate from Slate Creek in
21 case 11516 and from South Fork Feather River and Lost Creek
22 in the case of 11518.

23 Has YCWD constructed any facility to directly divert
24 work from those sources?

25 MR. PARKER: If I am not mistaken those permits were

1 incorporated in the South Fork Project and those represent
2 diversions and water rights that are incidental to the South
3 Fork Project itself.

4 MS. MROWKA: Has YCWD constructed any facility to
5 directly divert water from source streams under these
6 projects?

7 MR. PARKER: I'm sorry?

8 MS. MROWKA: Has YCWD constructed any facilities to
9 directly divert water from source streams under these
10 projects?

11 MR. PARKER: YCWD hasn't constructed storage or
12 diversion, but there was storage and diversion developed I
13 believe under these permits under the South Fork Project.
14 Part of that included the enlargement of the Slate Creek
15 Tunnel to accommodate potential future flows for Yuba County
16 Water District.

17 MR. BABER: I am going to object to that point. I
18 think the answer is not responsive to the question. I think
19 the question was: Has YCWD constructed any facilities
20 pursuant to the named permits that are the subject of this
21 hearing --

22 H.O. BROWN: Wait a minute.

23 MR. BABER: -- for diversion or storage?

24 H.O. BROWN: Mr. Lilly.

25 MR. LILLY: I think Mr. Parker is doing the best he can

1 to answer these questions. I don't think the answer was
2 nonresponsive, so I disagree with Mr. Baber.

3 H.O. BROWN: Ms. Mrowka.

4 MS. MROWKA: Mr. Parker, we heard Oroville-Wyandotte
5 testify before that it does deliver water from storage
6 facilities to your district. Do you have any knowledge of
7 what storage facilities it uses for deliveries to your
8 district?

9 H.O. BROWN: Hold it.

10 Mr. Baber, you had the objection. Is that question all
11 right now?

12 MR. BABER: That is fine.

13 H.O. BROWN: Proceed.

14 MR. PARKER: I understand from earlier testimony that
15 the water was delivered to our district from the Lost Creek
16 Reservoir after the waters were commingled from the other
17 upstream storage reservoirs in the South Fork Project.

18 MS. MROWKA: Did YCWD contribute to construction of any
19 of these facilities?

20 MR. PARKER: Monetarily?

21 MS. MROWKA: Monetarily.

22 MR. PARKER: Not monetarily.

23 MS. MROWKA: In what fashion?

24 MR. PARKER: Well, I understand that the ultimate
25 project evolved from the water rights hearing in the 1950s,

1 and at that point in time YCWD had prior filings to 68,000
2 acre-feet of water from some of the sources that were
3 identical to those proposed under the OWID project. And
4 that the entire agreement was predicated on that donation,
5 if you will, by the Yuba County Water District. We didn't
6 have anything -- we had water rights. We offered it to
7 completing projects that was somewhat different and the
8 agreement recognized that. And that is how we got here
9 today.

10 MS. MROWKA: What facility has YCWD constructed?

11 MR. PARKER: Did you say has or had?

12 MS. MROWKA: Has.

13 MR. PARKER: Has?

14 MS. MROWKA: Yes. What facilities has the district
15 constructed?

16 MR. PARKER: We constructed the Dobbins-Oregon House
17 Canal or constructed the treatment plant at Forbestown.

18 MS. MROWKA: When were those facilities completed,
19 roughly?

20 MR. PARKER: Roughly in 1964.

21 MS. MROWKA: Has any further construction occurred
22 since 1964?

23 MR. PARKER: Only in a way of extension of the
24 distribution systems and storage tanks, and then in 1988 the
25 district constructed a new state of the art treatment plant

1 at Forbestown. But so far as water supply facilities, we
2 have developed none.

3 MS. MROWKA: Thank you.

4 How many miles downstream of your place of use is Yuba
5 City, just roughly?

6 MR. LILLY: I am going to object, it's a little bit --
7 the question is confusing. I don't think Ms. Mrowka
8 intended it to be. The Yuba County Water District place of
9 use is not on the actual natural watercourse. I am not sure
10 if she is referring to distance from some South Fork --
11 from some facility on the South Fork of the Feather River or
12 something else. There is a difference between river miles
13 and direct distance miles. There is some confusion.

14 H.O. BROWN: Clear up the question.

15 MS. MROWKA: I am happy to do so.

16 I believe you said YCWD has constructed a few
17 facilities. One of them being the Dobbins-Oregon House
18 Canal. Why don't you use that for a checkpoint and tell me
19 how far downstream just in very rough terms is Yuba City
20 from there?

21 MR. PARKER: May I give what I think is a more relevant
22 answer?

23 MS. MROWKA: Certainly.

24 MR. PARKER: The place of use of the YCWD entitlement
25 that is provided to Yuba City is at Miners Ranch Reservoir

1 in Oroville. It flows after stopping through the Kelly
2 Ridge into Feather River at Oroville. It flows into Feather
3 River from Oroville to Yuba City. I estimate over 20
4 miles.

5 MS. MROWKA: Could it be a little more than that?

6 MR. PARKER: It could.

7 MS. MROWKA: If I understand this morning's testimony
8 correctly from Oroville-Wyandotte, they said that all the
9 water going into Forbestown Ditch is released at SF-14.

10 Is that your understanding?

11 MR. PARKER: I'm sorry, I didn't hear the last part of
12 the question.

13 MS. MROWKA: Is all the water going into Forbestown
14 Ditch released at SF-14?

15 MR. PARKER: All of the water to which YCWD is entitled
16 under the 1959 agreement that's utilized for its domestic
17 and irrigation purposes is released at SF-14. There are
18 some supplemental amounts that are utilized by YCWD that
19 originate in Oroleve Creek and from side hill flows into the
20 canal.

21 MS. MROWKA: Does both the 3,700 acre-foot that you use
22 in your service area plus the 4,500 acre-foot that you
23 currently provide to Yuba City get released at the SF-14
24 location into the ditch?

25 MR. PARKER: Was the question does both the 4,500

1 acre-feet --

2 MS. MROWKA: Plus the 3,700.

3 MR. PARKER: -- plus the 3,700 get released at SF-14?

4 MS. MROWKA: Yes.

5 MR. PARKER: No, only the 3,700.

6 MS. MROWKA: So the 4,500 is released into the system
7 at a different location?

8 MR. PARKER: Yes.

9 MS. MROWKA: Is that location near the Miners Ranch
10 Canal?

11 MR. PARKER: It is at the Miners Ranch Terminal
12 Reservoir, at the downstream end of the Miners Ranch Canal.

13 MS. MROWKA: What ditch losses or conveyance losses do
14 you utilize in calculating the difference between the
15 deliveries at the reservoir and what Yuba City is able to
16 pick up their downstream location?

17 MR. PARKER: To my knowledge, there has never been any
18 instream losses applied.

19 MS. MROWKA: Is that consistent with your experience on
20 losses in your system from SF-14 on through the canal
21 system? Is it consistent with the fact that there are
22 losses in that upper system and you are saying there is no
23 losses in this lower system?

24 MR. LILLY: I'm going to object. I think the question
25 is really mixing apples and oranges here. One conveyance is

1 Forbestown Ditch, and the other is the Feather River. And
2 to suggest the two would have similar conveyance losses I
3 think is assuming something that is not correct.

4 H.O. BROWN: Seems like there is a pretty logical
5 answer to that, Mr. Parker.

6 MR. PARKER: I think the volume of water provided by
7 the district into the river compared to flows of the river
8 is, I think, negligible and the river flows certainly
9 aren't subject to the same losses that the side hill canal
10 are subject to.

11 H.O. BROWN: Thank you, Mr. Parker.

12 MS. MROWKA: What's your historic rate of growth been
13 in YCWD?

14 MR. PARKER: I would have to estimate. Is that okay?

15 MS. MROWKA: Certainly.

16 MR. PARKER: I would say for the past three or four
17 years probably somewhere around 1 percent, possibly 1 and a
18 half percent. Perhaps in the five years prior to that up to
19 as much as 3, generally between 1 and 3 percent.

20 MS. MROWKA: Thank you.

21 In your opinion, if we were to approve the change
22 petition that Oroville submitted to change their place of
23 use, what impacts would that have on the water supply
24 availability to Yuba County Water District?

25 MR. PARKER: I don't know that it would have a direct

1 impact.

2 MS. MROWKA: You heard this morning's testimony from
3 Oroville-Wyandotte regarding ownership and access to project
4 facilities of the South Fork Project. Did you have any
5 disagreement with their testimony?

6 MR. LILLY: I am going to object to that question.
7 That question is pretty broad and open-ended. They
8 testified for about three hours. I think the question
9 really needs to be split up into more specific questions.

10 MR. BABER: I don't object to the question. I think
11 Mr. Parker --

12 H.O. BROWN: Wait a minute, Mr. Baber.

13 Do you have a response?

14 MS. MROWKA: I will clarify the question. It is a
15 multipart question.

16 H.O. BROWN: Mr. Baber, would that be all right with
17 you?

18 MR. BABER: That is fine.

19 MS. MROWKA: This morning Oroville-Wyandotte testified
20 that they own all of the South Fork Project facilities.

21 Do you concur?

22 MR. PARKER: That is my understanding of the 1959
23 agreement.

24 MS. MROWKA: And I heard them testify this morning that
25 Yuba County Water District has access to a water supply

1 because of the agreement between the districts.

2 Do you concur with that?

3 MR. PARKER: I heard that, but frankly I don't
4 understand that principle.

5 MS. MROWKA: Could you illustrate?

6 MR. PARKER: Sorry?

7 MS. MROWKA: Could you explain further?

8 MR. PARKER: When you were talking about access to the
9 project, I felt that that was legal terminology that I am
10 not familiar with. We certainly don't have physical access
11 to the project. The only hypothetical access that we would
12 have is whatever entitlements we are allowed under the '59
13 agreement.

14 MS. MROWKA: In your opinion have both Permits 11516
15 and 11518 been used by YCWD?

16 MR. PARKER: In my opinion I think that they have.

17 MS. MROWKA: YCWD petitioned to add municipal use to
18 Permit 11518. Do you have any current municipal customers?

19 MR. PARKER: Not that I am aware of.

20 MS. MROWKA: Where would the future municipal use
21 occur?

22 MR. PARKER: Sorry?

23 MS. MROWKA: Where would the future municipal use
24 occur?

25 MR. PARKER: I don't know the exact location, but

1 within the city of Yuba City.

2 MS. MROWKA: Thank you.

3 Oroville-Wyandotte in its testimony says that Yuba City
4 is not in the county designated for use by Yuba County Water
5 District. How do you respond to that?

6 MR. LILLY: I am going to object to the extent that
7 calls for legal argument and interpretation of the
8 contract.

9 H.O. BROWN: Ms. Mrowka, I confer with Mr. Lilly.

10 MS. MROWKA: If the 1959 agreement were no longer
11 referenced in Permits 516 and 11518, what impact would that
12 have on YCWD?

13 MR. LILLY: I am going to make the same objection. I
14 think to the extent this witness has knowledge -- I know,
15 Mr. Brown, your normal practice is to allow the question,
16 but that really is a hybrid question on facts and law.

17 H.O. BROWN: Give it another try, Ms. Mrowka.

18 MS. MROWKA: Do you believe that if that 1959
19 agreement were not incorporated into these two joint permits
20 as a permit term there would be any access problem for YCWD?

21 MR. PARKER: I don't know.

22 MS. MROWKA: Do you believe it would have any impact on
23 Oroville-Wyandotte providing your water supply?

24 MR. LILLY: I'll make the same objection.

25 H.O. BROWN: Same answer.

1 MR. PARKER: To the extent that I understood that
2 perhaps our only legal access was through the 1959
3 agreement, then it would have an adverse effect.

4 MS. MROWKA: Thank you.

5 MR. LILLY: Mr. Brown, I think we need clarification
6 there because there is one question whether it is deleted
7 from the permit, and there is another question whether the
8 contract remains in effect and has some validity. I think
9 there is some confusion there.

10 H.O. BROWN: I agree. You may wish to strike that last
11 statement.

12 MR. LILLY: Thank you.

13 H.O. BROWN: Strike the last statement.

14 MS. MROWKA: Mr. Parker, have you done any analysis of
15 the persons on your waiting list to try and get a ballpark
16 idea for how much water on average these people are asking
17 for?

18 MR. PARKER: No. Because we feel that there are so
19 many other people that would apply, and that to meet the
20 waiting list would just be a first step towards a long-term
21 development plan. So it's really irrelevant to our even
22 midterm needs. We have not done an analysis on a
23 case-by-case basis.

24 MS. MROWKA: Do you have any feeling if these persons
25 are asking for small amounts or medium amounts of water and

1 a definition for that?

2 MR. PARKER: I have a feeling, but no factual data.

3 MS. MROWKA: And what would that feeling be?

4 MR. PARKER: I'd say net delivery to the farm headgates
5 of perhaps two cubic feet per second.

6 MS. MROWKA: Per each or per total?

7 MR. PARKER: Per total.

8 MS. MROWKA: Thank you.

9 H.O. BROWN: Mr. Stein.

10 MR. STEIN: I have a couple questions of Mr. Grinnell.

11 In YCWD-5 you talk about the conveyance requirement in
12 the Dobbins-Oregon House conveyance system. In there you
13 say existing constraints that limit the capacity to 13 cfs
14 right now?

15 MR. GRINNELL: Yes.

16 MR. STEIN: What are those constraints?

17 MR. GRINNELL: There are a number of constraints, that
18 13 cfs I believe is a section of the canal that the ultimate
19 limit is that level. However, the ditch or the canal has
20 been gunited and improved, so that its original capacity has
21 been diminished through some of the maintenance activities
22 and putting it through pipes to cross failure areas and what
23 not.

24 MR. STEIN: The estimates and future demand in that
25 canal is 55 cfs, if I am reading your testimony correctly.

1 That is on Page 19.

2 And my question will be and this might go for Mr.

3 Parker: Does the district have any plans to increase the
4 capacity of the Dobbins-Oregon House Canal?

5 MR. GRINNELL: I'll answer from the analysis standpoint
6 and Mr. Parker can answer from the district's perspective
7 managementwise.

8 In the analysis several things would have to occur for
9 meeting future demands through the Dobbins-Oregon House
10 Canal. There is kind of a difference here between
11 Forbestown conveyance improvement. That has to happen all
12 at once because the pipeline, it would be a new conveyance.
13 With the canal, Dobbins-Oregon House Canal, the assumption
14 was, first off, there would be improvements to the choke
15 points, areas where there would -- with ultimate limits down
16 to the 13 cfs.

17 Secondly, then there would be from the top down
18 improvements as the area develops and the demands develop.
19 Those might happen all at once, was the assumption, or they
20 could happen incrementally as water was served and revenues
21 were made available to the district.

22 MR. STEIN: The second part of that would be to Mr.
23 Parker.

24 Are there plans in place to improve the Dobbins-Oregon
25 House Canal?

1 H.O. BROWN: The results show that with the project
2 operation there is more than sufficient water
3 available to meet the demands without shortages.
4 (Reading.)

5 And then in Exhibit 5, Page 1, first sentence reads:
6 The Yuba County Water District does not
7 currently have a large enough supply to meet
8 all of the water demands within the district.
9 (Reading.)

10 Can you explain further on those two to make sure I
11 understand what you are talking about?

12 MR. GRINNELL: Yes. The reference for Page 1 of
13 YCWD-5, stating that the district does not have large enough
14 -- currently a large enough water supply is in reference to
15 the limitations of the '59 agreement for the 3,700 acre-feet
16 per year. And so that is the major limiter of the
17 district's water supply currently.

18 In looking at the conclusion on Page 28, basically
19 saying that there is enough water available in this system
20 and this project to meet, easily meet, the district's
21 present unrestricted or unfettered demands and then also the
22 future demands within the project, it is -- this is an
23 artificial limiter currently. I should say artificially
24 contractual limiter to the development of the district.

25 H.O. BROWN: That is fine.

1 Thank you.

2 Conservation projects: a few years ago what we thought
3 was real conserved water, there has been a considerable
4 change in thinking. Water that percolates through the
5 conveyance facility upstream, where does that water
6 percolate to?

7 MR. GRINNELL: Specifically answering for the
8 Forbestown Ditch, that water eventually is going to get its
9 way back down to the South Fork Feather River tributaries
10 and won't be lost to the system, certainly.

11 Would be only a loss to deliveries of the district.

12 H.O. BROWN: Are you aware of some of the
13 considerations by this Board and by others, I suggest the
14 Bureau of Reclamation, as to projects that were eligible for
15 funding through conservation a few years ago are no longer
16 eligible today because they consider that water is really
17 not lost to the system?

18 MR. GRINNELL: Yes, Mr. Brown, in fact, we have looked
19 at that issue under Prop 204 moneys. And in those
20 determinations realized that there is from a water
21 conservation standpoint, it may be difficult to get funding
22 for a pipeline project because of those say revised views
23 regarding losses. So, yes, we have specifically looked at
24 that issue.

25 H.O. BROWN: If you first convince yourself and others

1 that this water is not really lost to the system in the
2 state's perspective, would that change your outlook on
3 constructing the facilities to reduce seepage?

4 MR. GRINNELL: It would -- recognize that we would not
5 be able to get funding potentially for conservation -- for
6 this project out of conservation project. However, because
7 it is a multi -- the objective of the pipeline project is
8 multipurpose, first and foremost reliability and safety --
9 safe water supply, that there is -- there would be funding
10 available through those types of programs. It may, in fact,
11 cut off one of the potential avenues for funding through
12 issue of conservation.

13 H.O. BROWN: If you consider each of those advantages,
14 capacity, water quality, water conservation and reliability,
15 and you were to eliminate the water conservation, would
16 there be sufficient payment capacity, in your opinion, to
17 justify the project?

18 MR. GRINNELL: There is not, in my opinion, a payment
19 capacity for the pipeline project for the district without
20 grant moneys.

21 H.O. BROWN: I mean payment capacity instead of not
22 necessarily return of dollars.

23 MR. GRINNELL: As I said previously, I believe that it
24 is a beneficial project and does warrant construction based
25 on the multipurpose that it provides and the objectives of

1 the district. So I do believe and we have explored funding
2 sources that seem to be amenable to the project for those
3 purposes of reliability and safety.

4 I hope that answers your question.

5 H.O. BROWN: It did. Yes, it does. But it also begs
6 the question, then, that the '59 agreement was primarily
7 concerned with water conservation. If it is, I don't know
8 that it is, but it would be concerns of water conservation
9 of having to construct these facilities, and it was
10 determined that there was no true real conservation ever
11 intended by the project.

12 Would that change the requirement in the agreement? I
13 don't expect you to answer that. The question is there.

14 H.O. BROWN: Mr. Lilly, have any redirect?

15 MR. LILLY: No redirect, but I would like to offer some
16 exhibits.

17 H.O. BROWN: All right.

18 MR. GALLERY: Mr. Chairman, if I may speak at this
19 point as looking at the clock. Seems to me that the other
20 witness who isn't showing up was sort of a backup witness.
21 And it is possible that unless these gentlemen plan on a lot
22 of cross-examination of Mr. Lewis, that we might be able to
23 finish, put our case on and conclude it in a matter of ten
24 minutes or so, so that if -- maybe we can finish today.

25 H.O. BROWN: Mr. Gallery, we will try to accommodate

1 Mr. Lewis.

2 On this basis, Mr. Lilly, would you mind waiting until
3 tomorrow morning to offer those exhibits and we can proceed
4 quickly?

5 MR. LILLY: That is fine with me if we can save a trip
6 for Mr. Lewis.

7 MR. GALLERY: I really wasn't -- I was thinking we can
8 all conclude today, and I wasn't meaning to interrupt Mr.
9 Lilly. I was thinking perhaps if they didn't have a lot of
10 cross-examination we can go in order but still conclude
11 today. So we are okay with Mr. Lilly going ahead with his
12 exhibits.

13 H.O. BROWN: Let's see how far --

14 MR. LILLY: At this time -- may I offer the exhibits
15 now?

16 H.O. BROWN: Yes, sir.

17 MR. LILLY: Excuse me for interrupting. We are not
18 going to offer Exhibit YCWD-1 for the reasons previously
19 discussed. We offer at this time Exhibits YCWD-2 through 25
20 and also Exhibit YCWD-4A.

21 H.O. BROWN: Okay. Exhibits 2 through 25 plus Exhibit
22 4A.

23 Are there any objections?

24 MR. BABER: No objection, Mr. Chairman.

25 MR. GALLERY: No objection.

1 H.O. BROWN: Those exhibits are accepted into evidence,
2 Mr. Lilly.

3 MR. LILLY: Thank you, Mr. Brown.

4 H.O. BROWN: Mr. Gallery, you're up.

5 ---oOo---

6 DIRECT EXAMINATION OF YUBA CITY

7 BY MR. GALLERY

8 MR. GALLERY: As I indicated, we have Mr. Lewis as our
9 principal witness for the city of Yuba City. We had John
10 Wright who we noticed to appear as our second witness, but
11 primarily as a backup witness. He has been with the City
12 longer than Mr. Lewis has. But unless some reason comes up
13 in the next minutes, we'd be willing to just submit the
14 testimony of Mr. Lewis and our other exhibits and conclude
15 our presentation with that.

16 So then, Mr. Lewis, you have been sworn, have you?

17 MR. LEWIS: Yes, I have.

18 MR. GALLERY: Yuba City Exhibit Number 1 is a copy of
19 your testimony; is that correct?

20 MR. LEWIS: That's correct.

21 MR. GALLERY: Do you confirm that is an accurate
22 statement of your testimony to be presented in this hearing?

23 MR. LEWIS: With one correction.

24 MR. GALLERY: Would you tell us what that is?

25 MR. LEWIS: On Page No. 7, Item No. 12, the second word

1 where it says, "OWID," should actually say "YCWD."

2 MR. GALLERY: The first line, Paragraph 12 of your
3 testimony?

4 MR. LEWIS: That is correct.

5 MR. BABER: Could you restate that?

6 MR. GALLERY: On Page 7 of his testimony, the second
7 line on Page 7 reads, "The OWID water supply is," should
8 read, "The YCWD water supply is."

9 MR. BABER: Thank you.

10 MR. GALLERY: Yuba City Exhibit No. 2 is statement of
11 your resume; is that correct? Is that a correct statement
12 of your resume and your background, Mr. Lewis?

13 MR. LEWIS: Yes, it is.

14 MR. GALLERY: Then would you go ahead and give us a
15 summary of your testimony in Exhibit No. 1.

16 MR. LEWIS: Thank you. I would like, first off, to
17 start with a little bit of history. Our mayor spoke a
18 little bit, but I think it is worth going through it a
19 little bit again.

20 Yuba City converted from a groundwater source to the
21 Feather River source water in 1969. In order to meet the
22 needs of our community, the City obtained two permits and
23 negotiated two contracts for delivery of water. Two permits
24 -- two of the permits are not able to be uses in the summer
25 months and two permits can be utilized in the summer

1 months. The two permits for the summer months use are State
2 Water Resource Control Board -- I'm sorry, State Water
3 Project and Yuba County Water District.

4 The State Water Project contract is for 9,600 acre-feet
5 of water without limitation on acre-foot per month, except
6 for the hammerlock provision. This provision states that
7 the ration of project water delivered during the year must
8 exceed the ratio of project work delivered during July and
9 August. In other words, if the project water is used to
10 meet 30 percent of the July and August demands, the project
11 water must also be used for 30 percent of the remaining
12 year. This clause is crucial in the management of Yuba City
13 water deliveries.

14 The only other contract that can be utilized by Yuba
15 City for summer water delivery is with Yuba County Water
16 District. This contract annually supplies up to 4,500
17 acre-feet per year, per monthly limitation in the months of
18 April through October. The contract has never been
19 curtailed as been testified earlier today in the 35-year
20 life, including the droughts of the '70s and '80s.

21 If Yuba City is not added to the place of use under
22 Permit 11519 and delivery under Yuba County Water District
23 contract is curtailed, the only other water available to
24 Yuba City during July and August would be the State Water
25 Project. Under this scenario, the State Water Project would

1 provide 100 percent of the summer water, and under the
2 hammerlock clause would then have to supply 100 percent of
3 the city water supply.

4 Current water supply needs are approximately 12,000
5 acre-feet per year. The State water contract is for 9,600
6 acre-feet and is subject to severe curtailments. As
7 recently as 1995, this contract was reduced by 40 percent.
8 The Water Project has only a 65 percent chance of delivering
9 80 percent of the contracted water and 15 percent of the
10 time can only deliver 50 percent of the contracted water.

11 Yuba County Water District has been able to supply the
12 full contract amount during the last 30 years. In 1988 Yuba
13 City negotiated a long-term agreement with OWID for supply
14 of water through the year 2050. This contract would have
15 resulted in a reliable water supply allowing the city to
16 terminate the State Water Project contract. The water
17 supplied under this contract was deemed surplus water and
18 OWID attorney stated that there was only a small chance of
19 curtailment.

20 This seems to indicate that OWID is not being injured
21 by the Yuba County Water District transfer of 4,500
22 acre-feet under permit 11518 or by the change in place of
23 use and the addition of a point of diversion as petitioned
24 by YCWD. Due to conflicts between YCWD and OWID, OWID
25 dissolved the contract in 1997.

1 In conclusion, if Yuba City is not able to continue
2 using the YCWD contract, the city will lose an important
3 source of water for current and future water needs. The
4 city would be forced to use 100 percent of the city's water
5 needs from the State Water Project. The city would be
6 subject to significant deficiency. Fifteen percent of the
7 time the State Water Project would only be able to meet 40
8 percent of the city's current water needs, 60 percent
9 shortage.

10 The city would lose the benefits of its permit water
11 entitlements. OWID would not be harmed by Yuba City
12 becoming a point of use for YCWD. This is demonstrated by
13 the 1988 agreement that was just terminated a couple of
14 years ago.

15 Yuba City respectfully submits that we be added as a
16 place of use and establish a redirection location in Permit
17 11518. Yuba City takes no position on the other differences
18 or disputes between OWID and YCWD, and Yuba City not be
19 penalized or be a victim of other problems in these
20 relationships between the two districts.

21 MR. GALLERY: Does that conclude your testimony?

22 MR. LEWIS: Yes.

23 MR. GALLERY: Yuba City Exhibits 3 through 15 are
24 documents that were referred to in your testimony that is
25 Exhibit 1?

1 MR. LEWIS: That's correct.

2 MR. GALLERY: Then we would be ready for
3 cross-examination, Mr. Brown.

4 H.O. BROWN: Thank you, Mr. Gallery.
5 Mr. Baber.

6 ---oOo---

7 CROSS-EXAMINATION OF YUBA CITY
8 BY OROVILLE-WYANDOTTE IRRIGATION DISTRICT
9 BY MR. BABER

10 MR. BABER: Thank you, Mr. Chairman.

11 Mr. Lewis, referring to your testimony in Exhibit 1, on
12 Page 7, where you made the one change, changing the word
13 "OWID" to "YCWD" --

14 MR. LEWIS: Yes.

15 MR. BABER: Referring to the Yuba City water supply is
16 vitally important.

17 MR. LEWIS: Yes.

18 MR. BABER: In connection with that one change, you
19 were aware that the water supplies you purchased, by you I
20 mean Yuba City, purchases from Yuba County Water District
21 is, in fact, the delivered by OWID pursuant to the '59
22 agreement; is that correct?

23 MR. LEWIS: I became aware of that in review of the
24 files, yes.

25 MR. BABER: Reviewing the files just for this testimony

1 here today?

2 MR. LEWIS: As Mr. Gallery pointed out, I have been
3 with the city for four years.

4 MR. BABER: So, it was just recently?

5 MR. LEWIS: Yes.

6 MR. BABER: And did you become familiar that the 4,500
7 acre-feet has actually been delivered to Yuba City for the
8 last 30 years?

9 MR. LEWIS: Yes.

10 MR. BABER: And that it's never been denied Yuba City?

11 MR. LEWIS: That's correct. I could not find any
12 mention of curtailments within the files.

13 MR. BABER: Thank you.

14 Did you learn that -- Strike that.

15 No further questions.

16 H.O. BROWN: Mr. Lilly.

17 MR. LILLY: No questions.

18 H.O. BROWN: Mr. Frink.

19 MR. FRINK: Just one.

20 ---oOo---

21 CROSS-EXAMINATION OF YUBA CITY

22 BY STAFF

23 MR. FRINK: Mr. Lewis, how does Yuba City divert water
24 from the Feather River?

25 MR. LEWIS: We have a pumping station located on the

1 banks of the Feather River.

2 MR. FRINK: When was that built? I thought there was
3 one question. There will be a couple more.

4 MR. LEWIS: The treatment plant was placed in line in
5 early 1969.

6 MR. FRINK: Who built the facility?

7 MR. LEWIS: The city of Yuba City built the facility.

8 MR. FRINK: I believe that is all the questions I have.

9 Thank you.

10 H.O. BROWN: Ms. Mrowka.

11 MS. MROWKA: I will be brief.

12 Yuba City Exhibit 4 is the water supply contract
13 between DWR and Yuba City, and that contract refers to area
14 of origin contractors. Are you one of the area of origin
15 contractors?

16 MR. LEWIS: To tell you the truth, I don't know.

17 MS. MROWKA: I also note that the contract with DWR
18 has been amended once to increase the amount of water
19 covered by the contract.

20 Do you know if Yuba City can again increase its
21 contract supply?

22 MR. LEWIS: I think that would be doubtful right now,
23 considering that the State Water Project has difficulty
24 delivering its 4.2 million acre-feet.

25 MS. MROWKA: Have you ever negotiated with DWR

1 regarding that topic?

2 MR. LEWIS: No, we have not.

3 Thank you.

4 MR. STEIN: No questions.

5 ---oOo---

6 CROSS-EXAMINATION OF YUBA CITY

7 BY H.O. OFFICER

8 H.O. BROWN: One quick question.

9 Do you use wells?

10 MR. LEWIS: There is one well located on the water
11 treatment plant that was placed, I believe, in the '70s
12 during the drought conditions as a backup water supply, and
13 it is capable of supplying, I think, a million gallons per
14 day of water. Capable of supplying a million gallons of
15 water.

16 H.O. BROWN: Any redirect?

17 ---oOo---

18 REDIRECT EXAMINATION OF YUBA CITY

19 BY MR. GALLERY

20 MR. GALLERY: Yes, just one simple question.

21 Mr. Lewis, Yuba City's Exhibit Number 6 is the 1965
22 agreement between the city and Yuba County Water District.

23 Was that when the purchase of 4,500 acre-feet began?

24 MR. LEWIS: I believe the purchases began in 1969 when
25 the water treatment plant went on line.

1 DIRECT EXAMINATION OF REBUTTAL TESTIMONY OF
2 OROVILLE-WYANDOTTE IRRIGATION DISTRICT
3 BY MR. BABER

4 MR. BABER: Mr. Onken and Mr. Glaze, you have heard the
5 testimony of Mr. Parker in response to questions from Ms.
6 Mrowka as to whether Yuba County Water District had built
7 any diversion or storage facilities pursuant to the 1959
8 agreement on the South Fork Project, did you not?

9 MR. ONKEN: Yes.

10 MR. BABER: Have you any knowledge of whether Yuba
11 County Water District has ever built any storage or
12 diversion facilities called for by the 1959 agreement?

13 MR. ONKEN: No.

14 MR. BABER: No, you have no knowledge or --

15 MR. ONKEN: I have no knowledge; they have not built
16 any storage facilities or conveyance facilities for water
17 supply to their system.

18 MR. BABER: Ever?

19 MR. ONKEN: From 1960 to present, no.

20 MR. BABER: No, they have not built any from 1960 to
21 present time; is that correct?

22 MR. ONKEN: Correct.

23 MR. BABER: You have heard the testimony of Mr.
24 Grinnell regarding a conveyance project under study when
25 asked by Mr. Frink, from Woodleaf Power plants, SF-14 down

1 to Forbestown Ditch. When did you become, if ever, familiar
2 with that project being under consideration by Yuba County
3 Water District?

4 MR. LILLY: I am going to object on the grounds of
5 relevance.

6 H.O. BROWN: Mr. Baber.

7 MR. BABER: Mr. Grinnell testified to it extensively,
8 and I am wondering -- Mr. Frink asked when the project was
9 planned. I'm wondering if we have any knowledge of that.
10 I'll tell you we do. That is why I am asking the question.

11 H.O. BROWN: Mr. Lilly.

12 MR. LILLY: He hasn't argued or demonstrated why it is
13 relevant to the issues of this hearing.

14 H.O. BROWN: Overruled. Go ahead.

15 MR. BABER: Go ahead.

16 Did you hear the question, Mr. Glaze and Mr. Onken?

17 MR. ONKEN: Yes.

18 MR. BABER: Could you answer the question.

19 MR. ONKEN: We worked with -- OWID cooperated with Yuba
20 County Water District and the Bookman-Edmonston firm in the
21 early 1990s so that they could start their evaluation of the
22 Forbestown Ditch. We requested when the report was
23 completed to get a copy of that report. And I believe it
24 was completed in early 1990s, 1992, approximately, at least
25 their initial investigation.

1 MR. BABER: Did you ever receive a copy of the report
2 from Bookman-Edmonston or Yuba County Water District?

3 MR. ONKEN: We made several requests. We never
4 received a copy of it until we saw Mr. Grinnell's
5 testimony.

6 MR. GLAZE: Could I add my comment to that?

7 MR. BABER: Yes, please.

8 MR. GLAZE: The only other thing I could add is that
9 Mr. Grinnell suggested that one of the options for funding
10 was for OWID to share. To date we've never been approached
11 nor has the issue of OWID participating in the financing
12 ever been suggested.

13 MR. BABER: Thank you.

14 You heard an estimate by Mr. Parker, I believe, of the
15 cost of the project, the replacement canal for the
16 Forbestown Ditch. I think something like 14,000,000. Was
17 that your number?

18 MR. GLAZE: My number.

19 MR. BABER: Did you hear any number from Mr. Parker or
20 Mr. Grinnell as the possible cost and where they would get
21 the funds?

22 MR. ONKEN: He estimated -- again, it depends on
23 capacity. But he said -- he did throw out a number, 6- to
24 \$8,000,000 for the seven-mile realignment of the ditch. But
25 I am not certain which capacity he was talking about for

1 that rough estimate.

2 MR. BABER: Has there ever been a request in either
3 renegotiation of the '59 agreement or otherwise of Yuba
4 County Water District to OWID to share in the cost of
5 reconstructing Forbestown Canal?

6 MR. LILLY: I'm going to object on the grounds of
7 relevance. And also to the extent that this question asked
8 for any settlement discussions or settlement pending issues,
9 that is not appropriate for this Board to consider in the
10 water right hearing.

11 H.O. BROWN: Mr. Baber.

12 MR. BABER: Mr. Chairman, it's -- I don't see it's
13 relevant to any settlement negotiations. It is simply what
14 has been ordered by the Board to renegotiate the agreement.
15 And we stand ready to talk constantly. I think that goes
16 beyond settlement. It's just a part of the process.

17 H.O. BROWN: I am going to sustain the objection.

18 MR. BABER: Mr. Glaze and Mr. Onken, you have heard Mr.
19 Parker testify to the construction and use by Yuba County
20 Water District of the Dobbins Canal, Oregon House Canal and
21 the Yuba County Water District Treatment Plant. Those were
22 two facilities constructed since the '59 agreements; is that
23 correct?

24 MR. ONKEN: Yes.

25 MR. BABER: Are those two facilities part of the South

1 Fork Project identified in the '59 agreement or are they
2 inhouse facilities constructed by Yuba County Water District?

3 MR. ONKEN: They are downstream of the delivery points
4 in the South Fork Power Project where we deliver water to,
5 when I say we, where OWID delivers water to Yuba County
6 Water District. They are not part of the South Fork Power
7 Project.

8 MR. BABER: Mr. Glaze, do you concur in that?

9 MR. GLAZE: I do.

10 MR. BABER: No further questions.

11 H.O. BROWN: Cross-examination, Mr. Lilly.

12 ---oOo---

13 CROSS-EXAMINATION OF REBUTTAL TESTIMONY OF

14 OROVILLE-WYANDOTTE IRRIGATION DISTRICT

15 BY YUBA COUNTY WATER DISTRICT

16 BY MR. LILLY

17 MR. LILLY: Yes.

18 Mr. Onken, please correct me if I am wrong. I believe
19 Mr. Baber asked you whether Yuba County Water District has
20 ever built any storage or conveyance facilities for its
21 system, and your answer was no.

22 Is that correct?

23 MR. ONKEN: He made reference to the power project.
24 That is where I answered. It was not on the South Fork
25 Power Project.

1 MR. LILLY: Your answer was limited to the South Fork
2 Project and did not include YCWD's own facilities, then; is
3 that correct?

4 MR. ONKEN: That is correct.

5 MR. LILLY: Just so we're clear, regarding the
6 construction costs of the South Fork Project itself, I think
7 we went over this this morning, but I think little
8 clarification is needed. The construction costs of that
9 project were funded by a bond; is that correct?

10 MR. ONKEN: That's correct.

11 MR. LILLY: One hundred percent of payments on those
12 bonds comes from the semiannual payments that PG&E makes to
13 OWID under the 1960 power purchase contract; is that correct?

14 MR. ONKEN: Yes. The power that is generated is
15 delivered to Pacific Gas & Electric Company, and they make
16 the -- they pay the semiannual payments to OWID, and then
17 the payments are made from OWID to the bondholders.

18 MR. LILLY: Basically, all the money to pay the
19 bondholders originate from PG&E and it passes through OWID
20 on its way to the bondholders?

21 MR. ONKEN: That's correct.

22 MR. LILLY: No further questions.

23 Thank you.

24 H.O. BROWN: Mr. Gallery.

25 MR. GALLERY: No questions.

1 referring to the entire project or just the power aspects of
2 that project?

3 MR. ONKEN: I don't know if this microphone works.
4 Does it work?

5 In the contracts there is reference where Yuba County
6 Water District could build additional facilities as part of
7 the power project or enlarge existing facilities as part of
8 the project.

9 MR. FRINK: The project, the power project?

10 MR. ONKEN: The power projects, which would allow
11 diversion of additional water and none of those facilities
12 were ever constructed.

13 MR. FRINK: When we use the term "South Fork Feather
14 River Project," is it your understanding that that is just
15 descriptive of the power project or does that also include
16 water diversions and storage facilities for consumptive use?

17 MR. ONKEN: That includes both, both for power and for
18 consumptive use.

19 MR. FRINK: Just so I am clear as to what your answer
20 was to Mr. Baber's question.

21 To your knowledge, has Yuba County Water District built
22 any water diversion or storage facilities as a part of the
23 South Fork Feather River Project?

24 MR. ONKEN: No.

25 MR. FRINK: Thank you.

1 H.O. BROWN: Any redirect?

2 ---oOo---

3 REDIRECT EXAMINATION OF REBUTTAL TESTIMONY OF
4 OROVILLE-WYANDOTTE IRRIGATION DISTRICT

5 BY MR. BABER

6 MR. BABER: Thank you, Mr. Brown.

7 Mr. Onken, in fact, OWID pays the bonds from moneys
8 they receive from PG&E for the power?

9 MR. ONKEN: Yes.

10 MR. BABER: They will continue paying the bonds through
11 the year 2010?

12 MR. ONKEN: That is correct.

13 MR. BABER: And then there will be a relicensing of the
14 facility?

15 MR. ONKEN: Yes.

16 MR. BABER: And all the relicensing costs are paid by
17 Yuba County -- Strike that.

18 All the relicensing costs are paid by OWID, not Yuba
19 County Water District; is that correct?

20 MR. LILLY: I am going to object. That calls for
21 speculation as to what will happen at that date in the
22 future.

23 H.O. BROWN: I will accept an opinion.

24 MR. BABER: Mr. Onken, you understand the '59 agreement
25 calls for OWID to relicense the power project; is that

1 correct?

2 MR. ONKEN: Yes.

3 MR. BABER: No further questions.

4 H.O. BROWN: Any recross, Mr. Lilly?

5 MR. LILLY: No questions, thank you.

6 H.O. BROWN: Mr. Gallery.

7 MR. GALLERY: No, questions.

8 H.O. BROWN: Staff. Okay.

9 Thank you.

10 Rebuttal, Mr. Lilly.

11 MR. LILLY: If I could have just a moment.

12 H.O. BROWN: Off the record for just a moment.

13 (Discussion held off the record.)

14 H.O. BROWN: Back on the record.

15 Again, Mr. Lilly.

16 MR. LILLY: We don't have any rebuttal.

17 Thank you, Mr. Brown.

18 H.O. BROWN: Mr. Gallery.

19 MR. GALLERY: No rebuttal.

20 H.O. BROWN: Does anyone wish any closing oral

21 arguments?

22 MR. LILLY: Can you just clarify whether you're going

23 to be receiving closing briefs.

24 H.O. BROWN: We will receive closing briefs.

25 MR. LILLY: My feeling is, given the hour and the

1 opportunity to finish today, we should probably save it for
2 closing briefs.

3 H.O. BROWN: Any comments, Mr. Baber?

4 MR. BABER: I agree with that, Mr. Chairman.

5 H.O. BROWN: Mr. Gallery.

6 All right.

7 Is all the evidence accepted, exhibits accepted, into
8 evidence? Have we missed any?

9 MR. BABER: I believe they are all in evidence, Mr.
10 Chairman.

11 H.O. BROWN: Closing briefs, give me a date, Mr. Frink.

12 MR. LILLY: Mr. Brown, in this regard -- of course, it
13 is your call. But one obvious relevant factor is when we
14 are going to get the transcripts. I know the Court Reporter
15 has been through some other hearings recently here and is
16 backlogged.

17 In particular for this Yuba County Water District,
18 given its low budget, we were hoping we could file the
19 closing brief after the transcript was posted on the Board's
20 website per its normal process. I would ask that you factor
21 that into your schedule for closing briefs.

22 H.O. BROWN: What I hear you saying, Mr. Lilly, you are
23 not in a hurry.

24 Are you, Mr. Baber?

25 MR. BABER: That is correct, Mr. Chairman, I am not in

1 a hurry. I think we do have to look at the closing
2 transcripts. I am even wondering, and I don't know whether
3 this is a possibility, you might have closing oral argument
4 within, say, a week after filing closing briefs.

5 H.O. BROWN: Mr. Gallery, is that all right?

6 MR. GALLERY: Acceptable to us, yes, Mr. Chairman.

7 H.O. BROWN: Cut some slack, Mr. Frink. Give us a
8 date here that you think this will work.

9 MR. FRINK: I am going to have to ask Ms. Mrowka or Mr.
10 Stein a question.

11 Do you know how soon we make the transcripts available
12 on our website?

13 MS. MROWKA: I believe there is a restriction. They
14 have to purchase the transcript from the Court Reporter for
15 90 days after the close of the hearing, at that point we are
16 allowed to post them on the website. That is the
17 contractual arrangement between ourselves and the reporter.

18 MR. FRINK: Mr. Brown, if he waited until they were
19 available on the website, it would be quite a while.

20 MR. LILLY: May I respond. I did not realize that, and
21 I don't want you to wait more than 90 days. That is too
22 long. Obviously, you want to work on your decision while it
23 is still fresh in your mind.

24 I believe, and please correct me if I am wrong, that
25 once the original transcript is filed with the State Board,

1 that at least it is available at the State Board office for
2 review by interested parties. We will be glad to follow
3 that procedure rather than wait for the website.

4 (Discussion held off record.)

5 H.O. BROWN: How about 30 days after that?

6 MR. BABER: Sounds fine, Mr. Chairman.

7 MR. LILLY: Basically, approximately 60 days from now.

8 H.O. BROWN: Let's go with December 18; it is on a
9 Monday. Gives you all a weekend to work on it, if you
10 wanted.

11 MR. BABER: Thank you, Mr. Chairman.

12 MR. LILLY: We will look at that as an early Christmas
13 present.

14 Thank you.

15 H.O. BROWN: December 18 at 5:00 p.m.

16 MR. LILLY: Mr. Brown, I assume that the normal rules
17 apply, that when parties file their closing briefs, they
18 mail copies to the other parties who are appearing in this
19 hearing?

20 H.O. BROWN: That's correct.

21 MR. LILLY: Thank you.

22 H.O. BROWN: Anything else, staff?

23 MR. FRINK: Just so we are clear on this, I believe Mr.
24 Baber said something about oral arguments. My understanding
25 is that you are not anticipating there would be oral

1 argument?

2 H.O. BROWN: No oral arguments. Closing briefs.

3 MR. BABER: That is fine.

4 Thank you.

5 H.O. BROWN: Ms. Mrowka, anything?

6 Mr. Stein.

7 The State Water Board will now take this matter under
8 submission. Following the close of the hearing, the State
9 Water Board and staff will review the record and prepare an
10 order for consideration at a Board meeting. All persons who
11 participated in this hearing will be sent notice of the
12 forthcoming Board meeting during which the matter will be
13 considered.

14 After the Board adopts an order on the petition, any
15 person who believes the order is in error has 30 days within
16 which to submit a written petition with supporting evidence
17 for reconsideration by the Board.

18 I thank all of you for your participation and the way
19 you handled this matter in an expedient manner.

20 This hearing is adjourned.

21 MR. BABER: Mr. Chairman, thank you.

22 MR. GALLERY: Thank you.

23 MR. LILLY: Thank you.

24 (Hearing adjourned at 4:45 p.m.)

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REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, ESTHER F. WIATRE, certify that I was the official Court Reporter for the proceedings named herein, and that as such reporter, I reported in verbatim shorthand writing those proceedings;

That I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 6 through 242 herein constitute a complete, true and correct record of the proceedings.

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 2nd day of November 2000.

ESTHER F. WIATRE
CSR NO. 1564

